Ontario
Human Rights
Commission

Ontario

Annual Report
1985-1986

TOGETHER WE ARE ONTARIO

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ONTARIO HUMAN RIGHTS COMMISSION

ANNUAL REPORT

1985 - 1986

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June, 1986

The Honourable William Wrye
Minister of Labour
400 University Avenue
14th Floor
Toronto, Ontario
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Dear Mr. Wrye:

Pursuant to Section 30(1) of the Human Rights Code, 1981, it is my pleasure to provide to you the Annual Report of the Ontario Human Rights Commission for the fiscal year 1985/86 for submission to the Legislative Assembly of Ontario.

Yours sincerely,

Canon Borden Purcell
Chairman

MINISTER'S MESSAGE

The last several months have been full of challenge both for the Ontario Human Rights Commission, and for me, as Minister responsible for the Commission since July, 1985.

To meet its commitment to strengthen the Commission and give it the stature it deserves, the government has taken some concrete and tangible actions which will have a great effect on the public we seek to serve.

We have taken the first steps in keeping our pledge to expand the role and budget of the Ontario Human Rights Commission to enable it to deal more effectively with the scores of cases of discrimination in the workplace and in housing, among other areas. Forty-one new positions were added to the staff complement in order to assist the Commission in resolving the tremendous backlog of 1,200 cases.

We also appointed a new race relations commissioner, Dan McIntyre, a leader in the field of human rights, a forceful communicator with a passionate concern for community relations, and fair employment and educational opportunities for Ontario's minority citizens.

Because the eradication of discrimination in all its forms is the core objective of the Commission, public education is one of its essential activities. I am happy to say that the Commission will be extending its active education program in order to reach all areas of the province, and to teach the public about intentional and unintentional discriminatory practices.

In the year to come, the government will continue to review and support the activities of the Ontario Human Rights Commission, to ensure that it retains its position in the forefront of all aspects of human rights activities in Ontario and in the country as a whole.

Yours sincerely,

William Wrye
Minister

CHAIRMAN'S REMARKS

The history of human rights in Ontario has been an ever-constant struggle for the dignity and rights of the people of this province. Yet it is a history filled with significant reminders of the constructive, inspirational steps taken to forward our goal of equality of opportunity and the protection of human rights for all Ontarians.

It is the law in this province that people are not to be victimized by discrimination. The Commission, in performing its role, has the legislation and commitment of government policy behind it. We have the legal expertise to advise and support us, and will do whatever is possible and required to strengthen and enhance the protection of human rights in Ontario.

The Code is more than a legal statute, however — it is vital to the way we live and interact with one another on a daily basis. Our legislation involves dignity. The human element has always been, and will continue to be, our first priority. As Premier Peterson stated almost one year ago, "Compassion means recognizing people's rights and insisting they be met."

Fiscal year 1985/86 saw an unprecedented number of complaints received by the Commission. In recognition of this increasing caseload, the Government of Ontario has expressed its active support and interest by allocating an increase in our human and financial resources. As you will read in other sections of this report, this year the Commission was able to effect far more creative and systemic remedies to address structural inequities as well as help develop mechanisms to resolve community and organizational tensions.

Recent Board of Inquiry decisions that will have a major impact on human rights have also been rendered. These include an order that a major employer accommodate an employee who was handicapped by a back ailment and a decision that a company recruiting in Ontario for a project overseas was found to have discriminated against a black applicant.

Very little of this could have been achieved without the unparalleled efforts and expertise of the Commission's staff. We are truly fortunate that such dedicated individuals choose to exercise their exceptional talents and skills in the human rights arena.

I would also like to extend a warm welcome to Dan McIntyre, our Race Relations Commissioner, whose academic and professional credentials are most appropriate for this important position.

It is with regret that the Commission acknowledges the end of the terms of office of Race Relations Commissioners Dr. Bhausaheb Ubale and Bev Salmon, Commissioner Mary Lou Dingle and our Vice-Chairman, Marie Marchand. The compassion, commitment and support to the cause of human rights which distinguished their years of service to the Commission, will, no doubt, continue in their future endeavours.

As ever, we are grateful for the co-operation and guidance of our Minister of Labour, the Honourable William Wrye, and we look forward to a long and productive association.

This has, indeed, been a year of progress and advancement for us, and I once again ask for your much appreciated support and assistance that we may continue to administer and enforce the spirit and the letter of the Code with sensitivity and wisdom.

THE COMMISSION

Back row, left to right:
Aileen Anderson, Lou Ronson, Gene Rheaume, Leslie Blake-Côté,
Lou Alexopoulos
Front row, left to right:
Catherine Frazee, Dan McIntyre (Race Relations Commissioner),
Canon Borden Purcell (Chairman), Bev Salmon (Race Relations Commissioner)
Absent: Marie Marchand (Vice-Chairman), John Bennett

THE COMMISSION

Chairman: Canon Borden C. Purcell

Canon Purcell, a member of the Commission since January 1978, is currently serving his second term as Chairman. Born in Athens, Ontario, Canon Purcell left his position as rector of the largest Anglican parish in Ottawa in order to assume his duties as Chairman of the Ontario Human Rights Commission in February 1982. The first clergyman to head such a commission in Ontario, Canon Purcell has planned and convened numerous ecumenical events that include conferences on racism, refugees and other disadvantaged persons. Involved in several international organizations on human rights, Canon Purcell is on the national council of the Canadian Human Rights Foundation and is a member of the Consultative Committee on Human Rights for the Canadian Council of Churches.

Race Relations Commissioner: Dan McIntyre

Appointed to the Commission in January 1986, Mr. McIntyre is a graduate in both business administration and social work. Prior to his becoming Director of the Ontario Region of the Canadian Human Rights Commission in 1982, Mr. McIntyre served as Chief of Community Liaison for that Commission. He has been active in the trade union movement and served as President of Local 70176 of the Public Service Alliance of Canada. Earlier in his career, he worked as a human rights officer, social worker and youth services director in New Brunswick.

Commissioner: Louis Alexopoulos

A scholarship recipient and graduate of the Universities of Wilfrid Laurier (B.B.A.), York (M.B.A.) and Western Ontario (LL.B.), Mr. Alexopoulos was appointed in February 1984 and brings to his role as Commissioner expertise in legal and financial areas. He is Director and Treasurer of the Canadian Paparaon Association - St. Nicholaos, was a founding member of the Hellenic-Canadian Federation of Ontario and the Hellenic-Canadian Law Association and is a member of the Hellenic-Canadian Professional and Businessmen's Association.

Commissioner: S. Aileen Anderson

Appointed to the Commission in February 1984, Ms. Anderson is a real estate agent and has served five consecutive terms as an elected trustee with the Etobicoke Board of Education. She was elected by the Board to be its representative on the Metropolitan Toronto School Board. Ms. Anderson was also a member of the Advisory Committee to the Minister of Education on General Legislative Grants, the Metropolitan Toronto Committee on Race Relations and Policing, and has served on the Etobicoke Planning Council since 1968.

Commissioner: Gene Rheaume

Gene Rheaume was born in the Peace River area of Alberta and graduated from the Universities of Saskatchewan and British Columbia. He was Member of Parliament for the Northwest Territories from 1963 to 1965. Mr. Rheaume is currently self-employed as a consultant on Native affairs. He was formerly the National Chairman of the Native Housing Task Force and is an honorary life member of five Metis, Indian and non-status Indian associations.

Commissioner: John Bennett

John Bennett resides in Sault Ste. Marie and has been employed by The Algoma Steel Corporation Ltd. since 1950. Actively involved in the trade union movement, Mr. Bennett also serves on the boards of the United Way, Sault Ste. Marie Library, Sault College of Applied Arts and Technology and the Canadian Mental Health Association.

Commissioner: Catherine L. Frazee

Catherine Frazee, currently the Product Standards Co-ordinator for Esso Petroleum Canada, holds Board membership in the Canadian Paraplegic Association and has actively served as a volunteer with a variety of community organizations such as the Canadian Special Olympics for the Mentally Disabled, the International Year of Disabled Persons and Daybreak Community for Mentally Disabled Adults.

Commissioner: R. Lou Ronson

R. Lou Ronson is Chairman of the Board of Workwear Corporation of Canada and holds directorships in over 20 business and community organizations. The recipient of numerous humanitarian awards, including the National Human Relations Award - Canadian Council of Christians and Jews, Mr. Ronson was also Chairman of an International Trade Mission sponsored by the Ontario Ministry of Industry and Tourism and the Canada-Israel Chamber of Commerce.

Commissioner: Leslie Blake-Côté

Leslie Blake-Côté utilizes her varied background in teaching, print and broadcast journalism and public relations as a feature writer for local and national trade magazines and newspapers, and as researcher/host of numerous cable television documentaries. Ms. Blake-Côté is also involved in community and volunteer endeavours.

Vice-Chairman: Marie T. Marchand

Born in Moncton, New Brunswick, Ms. Marchand studied political science and public administration at the University of Ottawa. A member of the Commission since 1979, Ms. Marchand assumed the duties of Vice-Chairman in April 1985. Fluently bilingual, Ms. Marchand has been extensively involved in many community organizations and is currently a member of the Board of Canadian National. Ms. Marchand's term expired in February 1986.

Race Relations Commissioner: Beverley Salmon

Bev Salmon practised her profession of public health nursing in northern Ontario, Toronto and Detroit. She has been actively involved in issues pertaining to multiculturalism, racism, education and the status of women, and was founding chairperson of the Black Liaison Committee of the Toronto Board of Education. Currently, she serves as an alderman in North York, is a member of the Arbitrators Institute of Canada and the Toronto Urban Alliance on Race Relations. Ms. Salmon's term expired in February 1986.

Race Relations Commissioner: Dr. Bhausaheb Ubale

Dr. Ubale was born in India and educated in the United Kingdom. He holds a Ph.D. in Economics. He authored a report entitled: "Equal Opportunity and Public Policy: A Report on Concerns of the South Asian Canadian Community Regarding their Place in the Canadian Mosaic." In July 1983 Dr. Ubale was elected to the Board of Directors of the International Association of Official Human Rights Agencies. Dr. Ubale's term expired in November 1985.

Commissioner: Mary Lou Dingle, Q.C.

Mary Lou Dingle is an active partner in a Hamilton law firm. She graduated from McMaster University in Hamilton and Osgoode Hall Law School in Toronto and was called to the Ontario Bar with honours in 1964. An active participant in community life, she is a charter member of the Hamilton Elizabeth Fry Society, a former member of the Equal Rights Review and Co-ordinating Committee for McMaster University and the Legal Aid Area Committee in Hamilton and was involved in the United Way and the Canadian Club. Ms. Dingle's term expired in November 1985.

COMMISSION ACTIVITIES

1985/86

The aim of the Ontario Human Rights Commission is to create a climate of understanding and mutual respect wherein the dignity and worth of every person is recognized and where equality of rights and opportunities is provided without discrimination. In an effort to accomplish this goal, the Commission places a strong emphasis on public education activities.

Public Education and Consultation

From its daily experience, the Commission has become increasingly aware of the ongoing need to educate groups and individuals about their rights and responsibilities under the Code and about the principles underlying its provisions.

During fiscal year 1985/86, the Chairman, Canon Borden Purcell and Commissioners participated in consultations and educational events throughout Ontario concerning human rights and the Commission's programs of conciliation and compliance and race relations. The Chairman participated in close to 125 public education activities including speaking engagements, conferences and community functions. This year he spoke at events in Windsor, Brantford, Burlington, St. George, Belleville, Kingston, Brockville, Smiths Falls, Ottawa and Toronto. The audiences at these speaking events were made up of employers, the Canadian Manufacturers' Association, various personnel associations, unions, lawyers, women's groups, Native people, religious institutions, ethnic, cultural and race relations organizations, associations assisting persons with physical and mental handicaps, police, service clubs and students. The Chairman also held consultations throughout the year with representatives of business, unions, the insurance industry, health care officials, religious leaders, officials from all levels of government as well as the Urban Alliance on Race Relations, the Ombudsman of Ontario and the Canadian Human Rights Commission. In addition, the Chairman and Commissioners were interviewed many times by the print, broadcast and cable media throughout Ontario, including the French language and ethnic press. As well, the Commission's staff continued its extensive educational programs of seminars, films, conferences, distribution of materials and consultations.

During the monthly meetings of the Commission, a number of individuals and organizational representatives were invited to discuss human rights issues which, in turn, enabled the Commission to be kept abreast of specific human rights concerns and assisted in its development of policies and programs. Through this forum, mutual goals were recognized as well as the need for co-operation in achieving them.

Close contact with school boards, business organizations, community groups and individuals committed to the advancement of human rights principles enabled the Commission to hold, co-sponsor and participate in many seminars and conferences throughout the province during the fiscal year in an attempt to further increase awareness of and sensitivity towards human rights in our society. These events are outlined in further sections of this Report.

Affirmation

Rabbi W. Gunther Plaut, former Vice-Chairman of the Commission, is the editor of Affirmation, the Commission's quarterly publication. It contains feature stories, personal profiles, examples of significant cases and settlements, findings of Boards of Inquiry, editorials and articles on important human rights topics. Articles are written by staff, Commissioners and members of the public and include a number written in the French language. Affirmation has a circulation of over 10,000, including employers, schools, labour, community organizations and members of the general public.

The June 1985 issue featured two articles about a highly successful conference for business executives organized by the Commission on the subject of "The Merit Principle in Action". Other articles focused on Judge Rosalie Abella's report on employment equity, and a board of inquiry decision dealing with sexual harassment.

September's issue included a feature story on John Kellerman, long-time community advocate and consultant on the rights of persons with a handicap. The Chairman's Corner paid tribute to the contributions to human rights made by the labour movement.

Affirmation's December 1985 issue featured an article on the problems confronting immigrant women in our society, and Canon Purcell's column focused on international human rights and the 37th anniversary of the United Nations Universal Declaration of Human Rights.

The March 1986 Affirmation contained an article highlighting a major board of inquiry decision in the complaint of Gladstone Leslie Scott against Foster Wheeler. The board chairman ruled that racial discrimination in employment had occurred and ordered Foster Wheeler to pay Mr. Scott almost $50,000 as compensation to remedy the matter, the largest monetary award ever granted in a human rights case in Ontario. There was also an article on systemic discrimination and one on the economic benefits to employers of implementing employment equity in the workplace.

International Responsibilities

Canada and its provinces and territories have been involved in the international human rights arena for many years. In signing the United Nations Declaration of Human Rights in 1948, all member nations assumed an obligation to promote human rights at home and abroad. Canada's interest was heightened during the Helsinki Conference of 1975 and by the adoption of its Final Act, which was the reiteration by all participants of their international human rights commitments.

The Commission forms part of, and holds membership in, a network of human rights agencies on both the national and international levels. During the fiscal year, Commission representatives participated in conferences held by the International Association of Official Human Rights Agencies, the Canadian Association of Statutory Human Rights Agencies and the Federal-Provincial-Territorial Committee of Officials Responsible for Human Rights. A number of representatives from human rights commissions in the United States, Australia and the United Kingdom sought information and assistance by exploring and examining the role and function of the Ontario Commission. The Ontario Human Rights Commission will play host to the annual conference of the Canadian Association of Statutory Human Rights Agencies in the summer of 1987.

A Federal-Provincial-Territorial Conference of Ministers Responsible for Human Rights, held in 1975, created a new national organization called the Continuing Federal-Provincial-Territorial Committee of Officials Responsible for Human Rights. This committee, which meets at least twice a year, was established to provide and maintain the necessary liaison among jurisdictions in Canada and consultation for Canada to meet its obligations under the International Covenants. Ontario has been an active participant on the Continuing Committee since its inception.

The Continuing Committee has co-ordinated several conferences of ministers responsible for human rights, modelled after the initial one held in 1975, during which ministers from all jurisdictions in Canada met to review and discuss current issues and initiatives in the area of human rights. This forum enables the members to gain a common understanding of problems and concerns in the different regions of Canada and to keep abreast of Canada's role in addressing human rights issues internationally. In addition, the ministers propose ways in which human rights programs in Canada can be strengthened to ensure that they conform to the principles enunciated in the International Covenants and the Canadian Charter of Rights and Freedoms.

The Chairman participated in a number of activities relating to the protection of human rights throughout the world. He attended the Canadian Human Rights Foundation Conference on Human Rights and Canadian Foreign Policy, held in Ottawa in March. He is a founding member of the Inter-Faith Council on Soviet Jewry and in this connection, participated in a number of public events designed to bring more attention to this continuing injustice.

United Nations Declaration of Human Rights - 37th Anniversary

December 10, 1985 marked the 37th anniversary of the United Nations Universal Declaration of Human Rights, whose principles form an integral part of the preamble to the Human Rights Code. The adoption of the Declaration was particularly charged with excitement because, for the first time, nations of the world spoke with one voice to proclaim the fundamental principles of human rights. The Declaration serves not only as an inspirational tribute to human values but also as a commitment to the furtherance of universal social harmony.

The Commission commemorated the anniversary of the Universal Declaration and the principles contained therein by sending, in both English and French, more than 6,000 letters and lists of suggested celebratory activities to schools, municipalities, and government agencies. Schools also received a copy of the Commission's 1984/85 Annual Report in French and English. Educational institutions throughout the province responded with an unprecedented number of requests for classroom and assembly speakers, literature and assistance in designing a human rights component as part of the curriculum.

The Commission wrote special letters to municipal leaders, requesting them to proclaim Human Rights Day/Week and to encourage observance of this event at the community level. Many municipalities responded positively to this request, by publishing and distributing official proclamations of support and adherence to the principles of human rights.

Clearly, individual human rights commissions and human rights legislation will not end discrimination on their own. The Ontario Human Rights Commission has a uniquely important role to play, but it requires the assistance and support of all individuals, organizations and institutions in our society to improve human rights and afford each individual the dignity and equality of opportunity that is his/her due.

NEW INITIATIVES

1985/86

The expanded mandate under the Human Rights Code, 1981 resulted in a dramatic increase in the number of complaints filed with the Commission. Between fiscal years 1981/82 and 1984/85, the volume of cases registered increased by 130 per cent, from 695 to 1,599. The number of inquiries and referrals handled in the same period increased by 144 per cent, from 27,000 to 66,000. Similar rates of growth were evident in public educational and consultative undertakings and in the number of requests for exemptions from the provisions of the Code. The large growth in the volume of work together with an inadequacy of staff resources resulted in a substantial increase in the backlog of complaints by the end of fiscal year 1984/85.

Minorities, women and persons with handicaps, together with their representative interest groups, are increasingly taking strong collective measures to redress incidents of discrimination. The four-year period has seen an increased tendency for advocacy and community groups to participate in the casework process on behalf of complainants and other members of groups that are protected under the Code. The enforcement of anti-discrimination legislation has a twofold effect. On the one hand, it engenders changes in society and its institutions by modifying employment and institutional practices, and on the other, it heightens the expectations of protected groups. Complainants are more aware of their rights under the Code and are less willing to accept discriminatory treatment together with what they perceive as inadequate remedies.

A related trend is an increase in the number and complexity of multiple complaints in step with complaints alleging systemic discrimination in response to discriminatory practices at the institutional level affecting large segments of the work force. Accordingly, the complaint process involves both the community and the institutional implications of a case as well as a remedy for complainants.

A number of administrative and organizational initiatives during the past several years have greatly assisted the Commission to deal more efficiently and effectively with its workload. In 1981 the Commission employed its first full-time legal counsel, whose primary role is to advise the Commission, its staff and members of the public with respect to the statutory interpretation of the provisions of the Code and their implementation. Not only has the introduction of substantive changes in the Code made legal input necessary, but the nature of the complaints and issues before the Commission are of an increasingly technical and complex nature. A second legal counsel was assigned to the Commission in 1985.

In addition, a number of new procedures were incorporated into the Code, providing a greater degree of administrative fairness to the parties to a complaint. Included among these is a provision under which complainants may request the Commission to reconsider a decision not to request the appointment of a Board of Inquiry to hear and decide their complaints. Following the reconsideration process, the Commission's decision is communicated in writing to the complainant and respondent. As well, the Commission has standardized the procedures governing the disclosure of information to the parties to a complaint. These procedures have become more refined in response to the continuing evolution of administrative law and concepts of administrative fairness. While these legislative and administrative initatives have proved to be of significant benefit to both complainants and respondents, they have resulted, in some instances, in an increase in the time required to resolve complaints.

For these reasons, it became compellingly evident during fiscal year 1985/86 that the Commission's resources were inadequate to accommodate all of these changes. Moreover, changes to the complaint procedures were required to expedite the handling of investigations.

In November 1985, in response to these trends, the Minister announced several measures to strengthen the Commission in order to enable it to improve the quality of its services. The Commission was allocated the resources to hire 41 additional members of staff, 13 of which are permanent positions in the Race Relations Division and 28 of which are one-year contract positions assigned to the Conciliation and Compliance Division.

Twenty new Human Rights Officers and seven clerical employees were hired early in 1986 and assigned to deal primarily with a backlog of 1,200 complaints that had been active for a period of six months or more. A co-ordinator was assigned to establish the framework for the backlog reduction program and manage and monitor its progress. It is estimated that most of these backlogged cases will have been resolved by June 1986.

In addition, a review of the Commission's operations was conducted during the fiscal year, and a comprehensive series of case processing and case management changes are recommended. The implementation of these recommendations will be completed during fiscal year 1986/87.

LEGAL INITIATIVES

1985/86

Judicial and Quasi-Judicial Decisions

In December 1985 the Supreme Court of Canada rendered a landmark decision in the case concerning a complaint filed by Theresa O'Malley against Simpsons-Sears Limited. Of great importance is the Court's ruling that it is not necessary to prove intent to establish a finding of discrimination. The Court held that human rights legislation is of a special nature and should be given an interpretation that will advance its broad purposes as set out in the preamble to the Code.

In this case, the complainant alleged that she was being discriminated against because her employer's policy required full-time sales staff to work on Saturdays which was contrary to her religious beliefs. The Court decided that an employment rule honestly made for sound economic and business reasons and equally applicable to all to whom it is intended to apply may, nevertheless, be discriminatory if it affects a person or persons differently from others to whom it may apply. This is adverse effect discrimination. In this kind of situation, the employer has a duty to accommodate the complainant short of undue hardship; in other words, to take such steps as may be reasonable to accommodate the employee without undue interference in the operation of the business and without undue expense to the employer.

In August 1985 the complaint of Michael Bates against the Zurich Insurance Company resulted in a significant decision by a Board of Inquiry, with far reaching implications for the automobile insurance industry. In essence, the complainant alleged that young, single male drivers must pay automobile insurance rates that exceed those of young, single female drivers as well as those charged to young, married male drivers, and that this discrepancy contravened the provisions of the Code. Since both the insurance company and the complainant agreed that a prima facie case of discrimination had been established, the question to be addressed was whether or not Zurich had a defence under section 21 of the Code. This section provides that rights under sections 1 and 3 of the Code are not infringed where a contract of automobile insurance makes a distinction on reasonable and bona fide grounds because of age, sex, marital status, family status or handicap.

The Board of Inquiry ruled that insurers should be required by section 21 of the Code to demonstrate that a rate classification system that discriminates on the basis of prohibited group characteristics is reasonably necessary to ensure the efficient operation of the insurance system. In the opinion of the Board, there was simply no evidence offered to support the assertion that it has been scientifically proved that there is a direct causal relationship between the discriminatory group factors used - age, sex, and marital status - and high risk. There was also no evidence offered by Zurich to show that unmarried males under the age of 25 constitute a high risk. The Board of Inquiry concluded that the current automobile driver classifications of unmarried male drivers under 25 contravened the Code and did not fall within the provisions of section 21. The respondent has filed an appeal from the decision of the Board of Inquiry, which has not yet been heard.

The Annual Report, 1984/85 contained a summary of the Cameron and Nel-Gor Castle Nursing Home case, which was the first Board of Inquiry decision in Ontario to deal with discrimination because of handicap. In finding that the complainant had

been discriminated against, the Board held that the complainant's handicap did not in any way limit her ability to perform the essential duties of the position that she was denied. The respondent's appeal of this decision was dismissed by the Divisional Court of the Supreme Court of Ontario in September 1985. In its endorsement the Court noted that it was unable to find error in the decision of the Board of Inquiry Chairman or in the reasons he gave for it. The respondent's Application for Leave to Appeal the Divisional Court's decision was dismissed by the Court of Appeal in November 1985.

A significant settlement of a complaint based on handicap was reached in the White and LCBO case. The complainant sustained an injury to his back while unloading heavy cartons at his place of employment. The employer initially refused to allow him to resume his position unless he could fulfil 100 per cent of his duties. Medical testimony before the Board revealed that Mr. White was physically capable of performing the essential duties of his job except for the heavy repetitive lifting, which appeared to be a minor part of the job. The Board heard from other employees with similar handicaps who testified that they had been accommodated with respect to their jobs. Following this evidence, the parties entered into a settlement which formed the basis of a consent order. The employer agreed to accommodate Mr. White with respect to his job, and the terms of the accommodation were set out in the order. The employer acknowledged that the Code requires the provision of reasonable accommodation to handicapped applicants and employees and that the abilities of handicapped applicants and employees to perform any job are to be assessed on an individual basis.

The highest award of damages ever granted by a Board of Inquiry occurred in the Gladstone Scott and Foster Wheeler case. In his decision, rendered May 17, 1985, the Board of Inquiry Chairman ruled that the employer had discriminated against Mr. Scott because of his race and colour when it refused to refer him for work on a project in Jamaica. Damages in the amount of $49,913.93 were awarded to the complainant. This amount covered general damages, special damages and interest. The Board noted that the purpose of an order should be to restore the complainant, so far as that is possible, to the position he would have been in but for the illegal and discriminatory act.

A punitive element was considered by the Board of Inquiry in awarding general damages in the amount of $3,000 to the complainant in the case of Underwood and The Board of Commissioners of Police for the Town of Smiths Falls. The Board gave its decision in December 1985 and came to the conclusion that the complainant's application for the position of Police Constable was set aside solely because he was 40 years of age. The Board of Commissioners of Police had infringed section 4(1) of the Code, which gives individuals the right to be treated equally with respect to employment without discrimination because of age. There was evidence of substantial and protracted injury to Mr. Underwood's dignity and self respect, and there was deprivation of his right to freedom from discrimination. The Board of Inquiry was of the view that the injuries suffered by the complainant were made more serious by the discrimination having been practised by a public body, whose judgements are bound to be more publicized and far more likely to be assumed by the public to be sound than those of a private organization. The Board of Inquiry noted that the respondent's reluctance to co-operate with the Commission's officer verged on obstructing him in his duties. In assessing damages, the Board of Inquiry took into account these obstructive tactics employed by the Board of Commissioners of Police of the Town of Smiths Falls.

An issue affecting sick leave benefits for pregnant women was addressed in a decision of the Supreme Court of Ontario in London Life Insurance Company and the

Ontario Human Rights Commission and Patricia Skidmore. As a result of this decision, which was released in May 1985, an employer who offers sick leave coverage to employees must extend such coverage to a pregnant woman who is not on a pregnancy leave of absence.

Amendment

Effective April 1, 1985, the definition of handicap found in section 9(b) of the Code was amended to include "an injury or disability for which benefits were claimed or received under the Workers' Compensation Act." This amendment underscores the intent of the legislation to prohibit employers from discriminating against persons because they have claimed or received benefits under the Workers' Compensation Act.

Canadian Charter of Rights and Freedoms

The coming into force of the equality rights provision of the Canadian Charter of Rights and Freedoms on April 17, 1985 has resulted in court challenges of the constitutional validity of certain provisions of the Human Rights Code, 1981, which allow for mandatory retirement at age 65 (s.9(a)) and participation in athletic activities to be restricted to persons of the same sex (s.19(2)). No decision has yet been rendered by the courts on whether section 9(a) of the Code infringes the Charter. With respect to section 19(2), in the Justine Blainey case the Supreme Court of Ontario ruled in September 1985 that section 19(2) contravenes section 15(1) of the Charter but that the exclusion of Justine Blainey was demonstrably justified in a free and democratic society under section 1 of the Charter and therefore did not infringe the Canadian Charter of Rights and Freedoms. An appeal from this decision was heard by the Court of Appeal in January 1986, but a decision has not yet been rendered. It should be noted that the Government of Ontario has stated its intention to repeal section 19(2) of the Code.

The Ministry of Labour, in conjunction with the Ministry of the Attorney-General, has reviewed other provisions of the Code with a view to bringing them into harmony with section 15 of the Charter. A number of amendments to the Code have been proposed and were under review at the time of writing this Report.

ROLE AND ACTIVITIES OF THE RACE RELATIONS DIVISION 1985/86

The Race Relations Division of the Ontario Human Rights Commission derives its statutory mandate in the area of race relations under section 27(2) of the Human Rights Code, 1981. The functions of the Race Relations Division, outlined in section 28(f), (g) and (h) of the Code, relate to race, ancestry, place of origin, colour, ethnic origin or creed, and require the Division to:

- inquire into incidents of and conditions leading or tending to lead to tension or conflict based upon identification by a prohibited ground of discrimination and take appropriate action to eliminate the source of tension or conflict;

- initiate investigations into problems based upon identification by a prohibited ground of discrimination that may arise in a community, and encourage and co-ordinate plans, programs and activities to reduce or prevent such problems;

- promote, assist and encourage public, municipal or private agencies, organizations, groups or persons to engage in programs to alleviate tensions and conflicts based upon identification by a prohibited ground of discrimination.

The Division's mandate clearly defines its role to include assisting and encouraging other agencies to engage in race relations work. The Division upholds the philosophy that human rights and harmonious race relations cannot be achieved by government agencies alone, but depend in large measure on the efforts and achievements of other organizations, institutions and individuals. The Race Relations Division's primary goal is to work with all levels of government, institutions and the community to help them to develop their own internal capacity to deal with problems of racism and racial discrimination by providing consultative services and other necessary assistance in policy and program development.

The Division is organized into three main units - Policy and Program Development, Operations, and Finance and General Administration. This structure facilitates the implementation of the Division's programs, which include the development of resource materials, the holding of consultations, seminars and conferences with community groups and institutions and the monitoring of the current race relations climate as well as the mediation of race-related conflicts and tensions in the community.

ACTIVITIES 1985/86

OPERATIONS UNIT

INSTITUTIONS

Education

The Division has co-sponsored a major human rights curriculum project with the Hamilton Board of Education. The project team has produced 12 modules on various human rights and race relations topics for Grades 11 and 12 People & Places courses and Grades 9 and 10 English courses. During fiscal year 1985/86, the Division organized the pilot testing of these modules in classrooms within eight participating Boards of Education. Revisions resulting from this testing will be incorporated into the material to be completed in 1986/87.

The Division maintained a co-operative working relationship with the Ministry of Education and assisted in planning the Ministry's major 2 1/2 day conference on race and ethnic relations which was held in March. One of the highlights of this conference was the presentation of a model race and ethnic relations policy which was distributed to the 800 educators and community representatives in attendance. This model policy was developed by the Race Relations Division with the assistance of a number of educators and race relations practitioners for use by School Boards across the province. This policy covers such areas as curriculum, school-community relations, co-curricular activities, employment and racial incidents.

Following is the statement of principle of this policy:

> The responsibility for promoting positive race relations and for combating racism and ethnic discrimination lies with all sectors of our society. There is a special responsibility for our educational institutions - the responsibility to help our young people develop the attitudes, values, knowledge - that will help them respect, understand and accept others. Each young person should feel a part of the community and have the opportunity to contribute fully to the development and well-being of the community.
>
> The promotion of positive race and ethnic relations must include a willingness to challenge the presence of prejudice and discrimination in our schools, our young people and our community. We must seek to create an environment where students, parents and employers feel that they will not be subjected to bias.
>
> Our society is a multiracial, multiethnic one, in which cultural pluralism is encouraged. Within this framework we must educate our students to respect others and to participate equally in this society. This educational process must begin with an attitude that recognizes that people, be they members of majority or minority groups, need to affirm their own histories through their own language, set of social relations, customs and creeds. We must look to schools as places where students learn of the contributions of all groups and where they develop respect for cultural, racial and ethnic diversity, which certainly exists in Canada and in Ontario regardless of the demographic composition of any one community. In order to affirm the Schools Board's commitment to this principle, it is expected that the School Board will, through its trustees, administrators, teaching and non-teaching staff, in

accordance with policies of the Ministry of Education:

1. develop and promote positive race and ethnic relations for its students, staff and community;

2. take steps to communicate its commitment to this principle to its staff, students and community.

The Division carried out numerous speaking engagements and training sessions with trustees, school administrators, principals, teachers and students during the fiscal year. The Division's staff conducted seminars and workshops with School Boards, educators, trustees and students. These workshops often featured the Race Relations Division film "Can Racial Attitudes be Changed?", which explores the racial attitudes of school children. Assistance was extended to the Scarborough and East York Boards of Education to develop race relations policies and to other Metropolitan Toronto area School Boards in the implementation and evaluation of their race relations policies.

Media

Staff of the Division facilitated the submission to the Ontario Press Council of a number of complaints about racially insensitive material in the press and closely monitored the outcome of these complaints. These included the complaint of the Anti-Apartheid Coalition of Toronto against The Toronto Sun for several articles they felt were racially offensive. The Coalition and other concerned community groups and individuals held a series of community meetings at which the support of the City of Toronto's Committee on Community and Race Relations and the Race Relations Division was enlisted. The Urban Alliance on Race Relations produced a report analysing the content of a number of articles in The Toronto Sun that were purported to be racist. Several meetings of concerned parties were held with the publisher of The Toronto Sun in an effort to sensitize the newspaper to community concerns and the potential negative impact of such articles on the community at large. While the complaints to the Ontario Press Council were not substantiated, the initiatives in this case have resulted in raising the awareness of the public and media to race relations concerns in the media.

Business and Industry

Staff of the Business and Industry sector of the Division analysed the distribution and use of the Workbook on Equal Opportunity in Employment, a document produced by the Division and first introduced in June 1984. In the 12-month period studied, 4,440 copies of the workbook were distributed upon request. The report identified employment sectors in which the workbook had received little distribution, and targetted those sectors for future marketing and distribution strategies. Consultations with individual employers revealed that the book was used in a variety of ways to train management staff, and evaluations of the book were positive. The Division used the report as a basis for a series of consultations held with major employers' associations, which gave rise to a number of co-operative efforts between the Division and these associations, including further distribution of the workbook, articles on the workbook in association newsletters and race relations seminars for interested association members.

Health Care

A study entitled An Exploratory Study of the Attitudes and Perceptions of Minority and Majority Health Care Workers was commissioned by the Division and authored by Dr. Wilson Head of the Department of Social Work, York University. This study was undertaken in response to a series of complaints launched by a group of visible minority nurses. The study focused on concerns about racial discrimination as it relates to promotional opportunities, work assignments and performance evaluation in health care facilities in Metropolitan Toronto. The objectives of the study were: to identify and document problems and concerns raised by racial minority nurses in a sample of health care settings in Metropolitan Toronto; to ascertain if these problems are experienced equally by nurses of all racial backgrounds or if there are specific areas in which racial minority nurses are subject to unequal or unfair treatment; to either verify the complaints of discrimination or show them to be groundless and to bring the findings to the attention of the relevant individuals and groups for appropriate action.

The report was released in the spring of 1986 and was preceded by a series of consultations with key health care organizations to discuss the issues raised and the recommendations made. The report and consultations will help shape the work of the staff assigned to this area during fiscal year 1986/87.

COMMUNITY RELATIONS

Mediations

Mediation of community conflicts and individual disputes continued to be an important component of the Division's work. The following are examples of activities engaged in by Division staff.

Several members of the Arab community alleged that a supermarket portrayed a distorted image of the entire Arab community by circulating a memo to the manager and department heads claiming that a man who looked like an "Arab" was cheating various store clerks at check-out counters. Following the Division's intervention, the supermarket extended an apology to the members of the Canadian Arab Federation and acknowledged the need to be more sensitive to all ethnic communities. They showed a great deal of interest in the Commission's work and requested that they be included in the mailing list of all Commission publications.

Two complaints were lodged with the Division alleging that a brand of toothpaste called "Darkie Toothpaste", portraying Blacks in a derogatory manner, was being sold in a Toronto store. The Division made contact with the store's proprietor and pointed out the negative impact of the sale of such a product on the community. The proprietor removed the offending item from sale.

The Division received a complaint alleging that a small store was selling racist material in the form of jokes printed on approximately 150 pieces of paper and contained in a soft-drink can entitled "Canned Laughter". An examination of the product indicated that the material stereotyped various racial and ethnic groups, including Blacks, Japanese, Poles and Jews.

The Division made contact with the owner of the store and had discussions with respect to the racist nature of the product. It was pointed out how many of the jokes stereotyped various groups and how this, in turn, impacted negatively on inter-group relations in the community. After protracted discussion with the proprietor, one of the jokes was pointed out as being stereotypical of women in general. The proprietor, a female, then agreed to remove the offending product from sale.

The Division is continuing to monitor these two cases, with a view to ascertaining whether the products are being sold elsewhere.

A major mediation was successfully concluded by the Division in Brantford during the year. Over a period of several years, a downtown subsidized housing development has become a densely populated community, with an ever increasing visible minority and ethnic presence. Within the same period a number of incidents were perpetrated by groups of youths against local residents, particularly racial minorities, the elderly, persons with handicaps and children. These youths engaged in acts of vandalism, physical and verbal assaults and theft. Many of the more publicized incidents involved attacks and acts of violence against visible minority residents in the area. Towards the end of 1985, these incidents had become a matter of great concern to local residents.

Although racial and ethnic tensions had developed in this community, they had resulted primarily from an inadequacy of community resources to deal with the various problems experienced by residents of the housing development. It also became clear that the situation had a serious impact on racial and ethnic minorities in the neighbourhood. It was necessary to co-ordinate a broad response that would address a variety of concerns, such as police-community relations and recreation and counselling services for youth.

The Division's response was multifaceted. The regional Race Relations Officer in Southwestern Ontario carried out an on-the-spot investigation and assessment of the problem. He worked with local police officials to obtain more information on the incidents. The officer then conducted a census of local service agencies, institutions and community organizations that had any contact with the youths involved. An action plan was developed to work with these agencies, institutions and community organizations in identifying the causes of the problem and methods of resolving it, as well as strategies to prevent future occurrences of this problem.

Further work to dampen the mood of confrontation and namecalling was then undertaken by the officer as a prelude to a public meeting organized to discuss the issues and concerns of residents. Neighbours, encouraged by the positive tone of the meeting, organized various groups to deal with particular aspects of the current problem. A number of standing action-oriented committees were established, including a neighbourhood watch group and a local dance and recreation committee, to help provide more positive forms of energy release for the young people in the area.

During the past year, many cases alleging the dissemination of hate propaganda against identified groups on the basis of their race, creed and ancestry were brought to the attention of the Division. Hate literature protesting the visit of the Pope to Canada and vilifying the Jewish, Sikh and Hindu communities surfaced both in Toronto and across the province. The Division referred these cases to a special task force set up by the Ministry of the Attorney-General for appropriate follow-up. In addition, the Division, in co-operation with the Multicultural and Race Relations Committee of Scarborough, organized a seminar on "Dissemination of Hate, its Causes and Impact. Are There Legal Remedies?" Among the speakers were Allan Shefman of the League for Human Rights of B'nai B'rith and Alan Borovoy of the Canadian Civil Liberties Association.

Municipal Government Initiatives

The Division's staff continued to assist various municipal governments to develop initiatives on race relations issues. This was achieved through two strategies:

- by acting as a resource person or consultant to those municipalities where race relations committees had been established;
- by offering assistance and advice to other municipalities in the development of similar infrastructures to deal with race relations and multicultural issues.

During the past year, staff of the Division assisted the City of Scarborough and the City of Mississauga in launching such initiatives. For two years, the Division participated in negotiations with the Mayor of Scarborough and a number of racial and ethnic organizations and developed recommendations to respond to race relations issues in the community. A proposal was presented to Scarborough City Council, which recognized the need to establish an advisory group to deal with issues relating to multiculturalism and race relations. Subsequently, the City Council struck a special "Sixty Day" Committee comprised of residents and members of Council to review the structure, terms of reference and membership of such a group. The Council requested and received assistance from the Division throughout this process. Upon the committee's recommendations, a municipal committee composed of senior representatives of Scarborough institutions and key community organizations was formed. A Division staff member attends meetings regularly and acts as a resource to the committee.

A similar process was undertaken in Mississauga, whereby the Division's staff assisted in the formation of the Mississauga Community Relations Committee, comprising senior officials of city departments and institutions, community representatives and staff of the Division.

Community Development Initiatives

In addition to responding to individual community conflicts, the Division's staff have also been instrumental in initiating developmental activities and programs for racial and ethnic communities. For example, a major community development project is underway at various Metro Toronto housing projects in the City of Scarborough. The implementation of these projects has resulted in sensitizing tenants to the dynamics of race relations and to the need for mutual understanding and respect of different racial groups, cultures and heritages.

The Province of Ontario declared the month of February to be "Black History Month." In order to celebrate the achievements of Black young people, the Division co-sponsored a Black Youth Conference, in co-operation with the North York School Board and the Black Educators' Committee. Nearly 200 youth participated in various workshops.

The Division's community development program includes other locally based initiatives, such as the formation of tenants' associations, inter-agency associations and advisory committees in Metropolitan Toronto Housing Authority housing projects.

Premiere of the Film "You Call Me Coloured"

The Race Relations Division co-sponsored a film on "Black Perspectives", a model community organization that assists young people to develop skills and aptitudes through music, poetry and art. The Division provided financial assistance and played

a consultative role in the production of the film. It also co-sponsored the premiere of the film in January 1986. Nearly 700 people, including politicians, community workers, young people and agency representatives, attended the premiere. The film depicts young Black musicians, artists and writers, and portrays the cultural contributions of the members of "Black Perspectives."

International Youth Year

The year 1985 was proclaimed as the "International Year of Youth" by the United Nations. Many community organizations from across the province requested assistance from the Division in organizing youth conferences designed to focus on issues affecting young people of various racial and ethnic backgrounds. A number of examples of such initiatives follow.

In Toronto, over 800 persons attended the Brihan Maharshtra Mandal Convention. This conference for the Marathi-speaking Canadians of origins in India provided discussion forums on various subjects pertaining to youth, such as social and cultural integration.

The Ontario Council of Filipino Canadian Associations celebrated International Youth Year by co-sponsoring a Filipino-Canadian Youth Conference. Approximately 200 young people attended workshops dealing with the aspirations, achievements and concerns of Filipino-Canadian youth.

In Windsor, the Division co-sponsored a conference with the Urban Alliance on Race Relations entitled "Windsor Youth Preparing for Tomorrow". The objective of this conference was to encourage the participants to develop a sense of responsibility and leadership with respect to race-related issues and to create a greater understanding of race relations among Windsor-area young people.

In co-operation with the South Asian Committee, the Division sponsored a conference entitled "Future Directions: A South Asian Youth Perspective". This conference was attended by over 500 persons who participated in workshops and lectures on topics that affect South Asian young people today. Other youth conferences co-sponsored by the Division were held in Etobicoke, Scarborough and the City of Toronto.

REGIONAL ACTIVITIES

Southwestern Ontario

During the fiscal year, the City of Hamilton developed a race relations policy which is included in all contracts of purchase and is distributed to every household in the municipality. A municipally-based race relations committee of 35 members has also been formed, with the mandate to enhance positive race relations in the City of Hamilton.

The seven municipalities that comprise the Waterloo Region are participants in the Waterloo Region Race Relations Council, a 12-person committee that maintains close contact with the mayors, police departments and School Boards in the area. The Council meets on a rotating basis in the seven municipalities and operates under the auspices of the Kitchener Multicultural Centre. The Division is actively involved in both the Hamilton and Waterloo Region Committees.

In Brantford, the Division's officer hosts "The Ethnic Half-Hour", a weekly cable television production. Originally, the show highlighted aspects of multiculturalism,

but is now examining race relations issues in depth. The program offers the Division a very practical method of keeping the region aware of human rights and race relations concerns and activities as well as a means of publicizing relevant publications and events. The Division and the Brantford Ethnoculturefest co-sponsored a conference entitled "The Concept of Human Rights in the Religions of the World."

In London, the Division and the London Human Rights Committee organized a seminar on "Academic Freedom and Racism" at the University of Western Ontario. This educational event was undertaken in response to students' concern about a scheduled lecture on campus by a controversial American psychologist, who propounds the theory that the darker the skin colour the lower the level of intelligence. Although the psychologist's lecture was eventually cancelled, the session aided greatly in sensitizing the community.

Staff of the Division worked with the Windsor Board of Education in the development and formal adoption of a race relations policy. A full-time co-ordinator has been appointed by the Board to implement this policy. On October 30, 1985 the Windsor Board of Education celebrated these two events and distributed framed statements of the race relations policies of the Ontario Government and the Windsor Board of Education to all principals and supervisory staff for display in their offices. Representatives of community groups and institutions attended a reception, where the policies were officially announced.

Eastern Ontario

The Division worked closely with the Kingston and District Committee for Multicultural and Multiracial Harmony and provided assistance in the development of its first constitution. The Committee is composed of representatives of various racial and ethnic groups in the Kingston area and is supported by educational and municipal authorities. Its first annual general meeting was held in April 1985, and sub-committees on education, media and public relations were established.

A member of the Division's Ottawa staff chaired the Advisory Community Committee on Ethnic Social Services (ACCESS), which organized a half-day seminar for senior management of health care and social service organizations, agencies and institutions. The seminar, held in the spring of 1986, was an important first step in the sensitization and education of key players in the health care and social service delivery systems.

Also in Ottawa, the Eastern Region's Race Relations Officer was a member of the planning committee of the Conference on Race Relations in the Workplace. Approximately 250 individuals attended this three-day conference and examined such issues as screening and selection, labour relations, staff training and legislation concerning human rights.

In February 1986 the Division received reports of a number of racial incidents on the campus of Carleton University, including racially derogatory graffiti and the defacement of posters commemorating "Black History Week." The Division's staff met with University officials and representatives of several students' organizations to discuss strategies for dealing with the problem. The University student association indicated its willingness to conduct an internal investigation into the allegations of racism, and the Division offered its assistance in this regard. These events coincided with an invitation to the South African Ambassador to participate in a debate on campus about freedom of the press in South Africa.

In March the Division co-sponsored a student conference on human rights and race relations with the Frontenac County School Board. Three hundred students and Board staff attended the one-day presentation.

Northern Region

In Thunder Bay, the officer is working with the Affirmative Action Co-ordinator of the City to develop education workshops on affirmative action.

In Kenora, a member of staff participates on the board of the "New Opportunities for Women" Program, which provides life skills training, academic upgrading and work experience for employment-disadvantaged women, the majority of whom are Native women. This is a 35-week program, which is in its third year of operation.

The Sault Ste. Marie Friendship Centre, in consultation with the Commission, is preparing an employers' procedural manual on personnel policies. The Commission will assist the Centre to develop guidelines on recruitment, interviewing techniques, establishing terms and conditions of employment, promotion and other employment practices.

Training is being provided to the Sault Ste. Marie Police Department on human rights and cross-cultural issues. Approximately eight sessions have been held over the past three years, involving over 150 officers of the Department.

The Commission has also assisted the Cambrian College Committee on Affirmative Action. The Committee has completed an employee inventory and has drafted a policy for the Board of Governors on employment equity. A co-ordinator will be hired to implement the program, which will attempt to increase the participation of minorities, Natives, women and persons with handicaps in upper management positions.

In Timmins, a staff representative is chairing the Crisis Intervention Steering Committee, which is looking into setting up a crisis centre that will address the needs of Native people as well as those of the community as a whole. Division staff has also discussed with two area Boards of Education the formation of a committee that would formulate a race relations policy for their respective schools.

POLICY AND PROGRAM DEVELOPMENT UNIT

The main objective of the Policy and Program Development Unit is to provide staff functions primarily of a research and analysis nature, to the Division. There are four basic components of this Unit's activities: policy analysis, research, management planning/program development and special projects.

Policy Analysis

Recognizing the particular disadvantages experienced by visible minority women in our society, the Division has initiated an extensive review of its policies, procedures and programs to determine their relevance to visible minority women and issues of importance to them. As well, the Division is working with other provincial government bodies in determining how best to address this initiative.

Staff of the Policy Unit were involved in several inter-ministerial committees to look at such topics as visible minority women, immigration and immigrants and race relations and education.

Research

The Division conducted a number of research projects throughout the course of the year. A major study on employment disadvantaged visible minority youth was commenced and is expected to be completed in the summer of 1986. A study on the racial climate in several cities in the Metropolitan Toronto area was completed during the summer of 1985.

Management Planning Program Development

The Division implemented a computerized statistical information system in order to upgrade its data base. This system is designed to enable accurate and frequent retrieval of information which will be used to assist staff in conducting programs and activities more effectively. The system will also generate information which will be used in future program development.

Special Projects

The Race Relations Division's Youth Employment Project is in its sixth year of operation. The objective of these projects is to provide disadvantaged young people with first job opportunities, work readiness and race relations training. During fiscal year 1985/86, the Division, assisted by the Personnel Branch of the Ministry of Labour, administered six separate programs employing a total of 215 young people in a host of different jobs. The project was begun in Toronto and Windsor and has now been expanded to include Brantford.

The Division also co-sponsored two youth employment projects with the Metropolitan Toronto Police. A total of 41 young people worked directly with police officers in several areas of crime prevention. In one successful project, the participants conducted crime prevention seminars for senior citizens based on the Seniors Taking Extra Precautions (S.T.E.P.) program.

OFFICE OF THE RACE RELATIONS COMMISSIONER

Public Education

Until the conclusion of his term as Race Relations Commissioner in November 1985, Dr. Bhausaheb Ubale continued to engage in activities focusing on the promotion of harmonious race relations throughout the province. This was accomplished through his participation and leadership in conferences, public meetings and consultations with officials of institutions and community members alike. He continued to play a liaison role in community conflict situations in Metropolitan Toronto.

Dr. Ubale also played a key role in the International Association of Official Human Rights Agencies as a member of its Board of Directors.

Race Relations Commissioner Beverley Salmon conducted and participated in public awareness and consultative activities throughout the year on behalf of the Division as well.

Upon his appointment as Race Relations Commissioner in January of 1986, Dan McIntyre quickly established linkages with community organizations and institutional representatives. He also played an active role in public educational activities, including acting as keynote speaker during the Federation of Canadian Municipalities Symposium on Race Relations where he addressed the responsibility of municipalities in ensuring racial harmony and equal opportunity in their jurisdictions, and as a

keynote speaker during the Provincial Education Minister's Conference on Race and Multicultural Relations.

Mr. McIntyre also represents the Division on the Staff Working Group of the Government of Ontario's Cabinet Committee on Race Relations, assisting and advising on the policies and programs under review by the Committee.

In addition, the Race Relations Commissioner is conducting an operational review of the Division to determine the most effective means by which the Division can fulfil its mandate. It is expected that this review will have a significant impact on policy and program development in fiscal year 1986/87.

DISCRIMINATION BECAUSE OF HANDICAP

Fiscal year 1985/86 completes the third year of implementation of the provisions of the Code relating to handicap. Although a significant proportion of the complaints based on physical or mental handicap is handled in the regions, the Unit for the Handicapped performs a specialist and consultative role. Hence, the more complex complaints and issues relating to discrimination because of handicap are handled by the Unit. The Unit is also responsible for assisting the Commission to develop policy initiatives in the area of discrimination on the ground of handicap. A committee, chaired by Commissioner Catherine Frazee, has been established to review programs and policies in this area.

One of the policy areas examined by the Commission during the fiscal year was the application of the Code to employment-related medical examinations. This policy is discussed in detail later in this section of the Report. Questions about illness, injuries or medical histories, in the past or present may not be asked on an employment application form. In many instances, pre-employment medical examinations operate to screen out persons with handicaps.

Handicap is defined in the Code as any degree of physical disability, mental retardation or impairment, learning disability or mental disorder. In addition, since April 1985, a person may not be discriminated against because he or she has received Workers' Compensation benefits. The inclusion of "an injury or disability for which benefits were claimed or received under the Workers' Compensation Act" in the definition of handicap allows injured workers who can perform the essential duties of the job to compete equally with persons who have not received such benefits. In addition, the exploration of reasonable accommodation of persons who have been injured on the job is included in the complaint process.

Statistics on the total number of complaints received indicate that the volume of complaints alleging discrimination because of handicap continues to exceed the number of complaints on any other single ground. Complaints on the basis of handicap represented 32 per cent of all complaints filed during 1985/1986.

ACTIVITIES 1985/86

Complaints of Discrimination

During the period of April 1, 1985 to March 31, 1986, the Commission received 431 formal complaints. Over this period, 302 complaints were closed with 197 settled, 47 dismissed by the Commission either due to lack of jurisdiction or lack of evidence to support the complaint and 58 were withdrawn by complainants.

Of complaints filed, 388 were on the ground of physical handicap and 43 were on the ground of mental handicap. The types of handicaps are shown in Table 5.

The Commission and Unit staff continued to examine major issues involving physical standards established for firefighters and police officers, such as visual acuity, colour blindness, obesity, diabetes and allergies, to ensure that employers' selection criteria and screening procedures are valid and job-related.

With regard to visual acuity, colour blindness and diabetes, Unit staff have worked closely with medical specialists, the Canadian Ophthalmologists' Association, the Canadian Diabetes Association, Provincial Fire Marshalls and Chiefs of Provincial Police Departments to establish valid and reliable criteria and testing procedures for standardizing the selection process in the recruitment of firefighters and police officers.

Settlements have been achieved in a number of complaints filed by handicapped individuals against insurance companies that have refused them coverage because they are believed to be at a greater risk than non-handicapped applicants. Many complaints have been resolved as a result of enforcing the provisions of the Code, which require that: (1) all assessments be made on individual merit, and (2) valid and reliable evidence be provided by the respondent to demonstrate that the exclusion is reasonable and bona fide.

The Commission has received complaints from physically and developmentally handicapped individuals with regard to equal access to education and transportation, and these are currently being investigated.

In addition, consultations were held with occupational therapists, physicians, vocational rehabilitation counsellors and other medical specialists about accommodation, aids and adaptations and to explore areas such as Physical Demands Analysis, Functional Capacities Assessments and medical reviews. These techniques attempt to determine the job performance ability and potential of individual complainants. Contacts have been established and maintained with agencies such as the Handicapped Employment Program of the Ministry of Labour, the Community Occupational Therapists Association (COTA), the Chedoke McMaster Rehabilitation Department, the Department of Optometry of the University of Waterloo, the March of Dimes, the Workers' Compensation Board, Vocational Rehabilitation Services of the Ministry of Community and Social Services and the Ministry of Education.

The staff assisted employers in their understanding of and compliance with the provisions of the Code by reviewing their pre-employment screening measures, such as advertising and application forms. In addition, employers were assisted in developing appropriate methods to determine the essential duties and requirements of specific jobs as these relate to the individual's ability to perform them. Educating employers about affirmative recruitment strategies was another important undertaking.

Similar activities sought to ensure equal treatment for persons with handicaps in the areas of services, accommodation and contracts.

Several interesting issues are exemplified in the following case summaries:

A neutral job requirement that all applicants must hold a driver's licence operates to exclude qualified persons who are visually impaired. Unless such a requirement is shown to be reasonable and bona fide, it is contrary to section 10 of the Code as it has adverse impact on handicapped applicants.

A significant settlement was reached in a complaint filed by a blind person who alleged that he was denied employment as a counsellor on the grounds that he did not hold a driver's licence. The respondent's position was that an essential duty of the job is to make calls on clients, and ability to drive an automobile is required for many of these visits. The employer also maintained that to provide the necessary accommodation for a blind employee would cause undue financial hardship.

The investigation showed that a driver's licence was not an essential requirement for the performance of the essential duties of the job as the complainant could arrange his own efficient and cost-effective transportation. The evidence indicated that the assigned territory could be geographically restricted to ease the travelling requirement. Moreover, the cost of the accommodation required was significantly less than that estimated by the respondent and would cause no undue hardship to the employer.

At conciliation, the respondent agreed to compensate the complainant in an amount representing one year's salary and to eliminate the requirement of a driver's licence, replacing it with the ability to provide one's own transportation for all positions except those involving a substantial driving requirement.

In April 1984 the first Board of Inquiry decision in Ontario on the ground of handicap was rendered in the complaint of Cameron against the Nel-Gor Nursing Home. The Board chairman found that the respondent nursing home had discriminated against Ms. Cameron when she was refused employment as a nurse's aide because of the belief that a congenital malformation of her left hand would prevent her from performing the job.

The Board ruled that once a prima facie case has been established, the onus shifts to the employer to prove that the handicapped person cannot perform the essential duties of the job because of handicap.

The Board found that despite her handicap, Ms. Cameron was capable of performing the essential duties or requirements of the job. The complainant was awarded the next available nurse's aide position in addition to $4,551 in compensation for lost wages, general damages and interest.

In September 1985 the respondent appealed the decision to the Divisional Court of the Supreme Court of Ontario. The Court dismissed the appeal. The respondent then applied for leave to appeal the Divisional Court's ruling. This application was also dismissed, with costs being awarded to the Commission. The complainant has subsequently received monetary compensation as ordered by the Board of Inquiry, which totalled $5,428, including accumulated interest.

The Board of Inquiry consent order in the complaint of White against the Liquor Control Board of Ontario may be found in the section on Boards of Inquiry in this Report.

The issues examined by the Board were whether or not Mr. White, an injured worker, was capable of performing the essential duties of the job, reasonable accommodation in the way of job modification and the LCBO employment policy that a worker returning to work after illness or injury must be 100 per cent fit to do the job in question.

During the course of this hearing, the parties reached a settlement, which was read into the Board order.

Public Education

The objective of public education is to inform persons with handicaps and their organizations about their rights under the Code. An additional purpose is to advise employers, business and industry, landlords and unions about the provisions of the Code and their application.

The staff provided educational and consultative services on a province-wide basis for business, industry, unions, vocational associations, professional associations, health care professionals, educational systems, inter- and intra-governmental agencies, voluntary groups and religious associations.

In addition, members of staff conducted seminars on the Code's provisions relating to handicap for supervisors and managers within the Ministry of Community and Social Services,Ontario Advisory Council on the Physically Handicapped, Personnel Association of Ontario, ABITIBI Company,the Canadian Association for Cerebral Palsy, the Council for Equal Employment of the Disadvantaged, Waterloo Region Community Legal Services, McMaster Legal Services of Hamilton, the City of Toronto's Equal Employment Opportunity Program, Simcoe County Board of Education, Fraser and Beatty, Barristers and Solicitors, the Georgian Bay Chapter of Occupational Health Nurses of Walkerton, the Ontario Association of Occupational Health Nurses Conference and the Metro Toronto Epilepsy Association. The staff also worked with a number of agencies for the developmentally handicapped throughout the province.

Interprovincial consultations were held with the human rights commissions of Alberta, Saskatchewan and Quebec.

The Commission has installed a TTD (telecommunication device for people who are deaf). The telephone number is (416) 965-6871.

Staff Training and Development

Training sessions for the Commission's staff on major issues and approaches pertaining to discrimination because of handicap are conducted on a regular basis at regional staff meetings and workshops.

The Commission continues to develop and acquire resource information about discrimination against disabled persons. These materials deal with such subjects as existing legislation that protects the rights of persons with handicaps, related legal interpretations and case law. This information allows staff to keep abreast of new developments in North America and overseas.

PROGRAM AND POLICY DEVELOPMENT AND RESEARCH

Employment Medicals

While the issue of employment-related medicals has not been considered under the Ontario Code, a recent Saskatchewan decision (The Saskatchewan Police Commission (1984) 5. CHRR D/2317) prompted the Ontario Commission to review and reassess its interpretation of the relevant provisions of the Code. In this case, the Saskatchewan Human Rights Commission decided to refuse to grant an exemption to the Saskatchewan Police Commission to allow them to conduct medical examinations of applicants for police officer positions before they had made an offer of employment in writing. The decision set out two additional conditions that must exist before a medical examination may be conducted: a reasonable occupational requirement that requires a certain physical ability must have been identified and the essence of the business would be undermined or the safe performance of duties would be threatened by persons who lack a certain physical ability.

As a result, the Ontario Human Rights Commission established the following position with regard to pre-employment medicals:

1. All employment-related medicals as part of the application process are prohibited.

2. Employment-related medicals will be considered "reasonable and bona fide" as per section 10(a) of the Code only if conducted under the following circumstances:

    (a) after a written offer of employment,

    (b) where the specific physical abilities required to perform the essential duties of a position have been identified,

    (c) where the medical examination is limited to determining the person's ability to perform the essential duties of the position,

    (d) where the essence of the business would be undermined or the safe performance of duties threatened by persons who lack these specific physical abilities or have a certain physical condition,

    (e) where reasonable accommodation for those failing to pass the test is included as part of the process.

Report on Absenteeism

A study of the application of the Code with respect to absenteeism was conducted in 1985. The research was used to develop guidelines for establishing a non-discriminatory policy on absenteeism in the workplace in instances where the time lost relates to a handicap as defined in section 9 of the Code. The Report concludes that the needs of employees who are unable to work for temporary or prolonged periods because of illness or injury must be considered in light of the protections provided in the Code.

The policy guidelines adopted by the Commission are as follows:

- The absenteeism must be related to a handicap as defined in section 9 of the Code.

- Medical evidence must exist to support the claim that the absenteeism is related to handicap as defined in the Code.

- The employer should establish a policy on attendance that is communicated to all employees and equally applied to all members of the work force.

- The employer should demonstrate that reasonable attempts have been made to accommodate an employee who has been absent due to illness. Alternatively, it must be shown that, under the circumstances, further accommodation was impractical or impossible in terms of cost, productivity, efficiency or substantial risk to other employees or the public.

Group Homes

Due to a growing trend toward integration, group homes for ex-offenders, ex-psychiatric patients and physically and mentally disabled persons have been established in the community in recent years. This new concept has met with a great deal of resistance in the community. The Commission has successfully resolved complaints of harassment in accommodation filed by residents and members of staff of a number of group homes.

As a result of consultations, members of the Inter-Ministerial Committee on Group Homes (Ministry of Health, Ministry of Community and Social Services, Ministry of Correctional Services and the Secretariat for the Disabled) met with the Commission to develop procedures to respond to community concerns about these facilities.

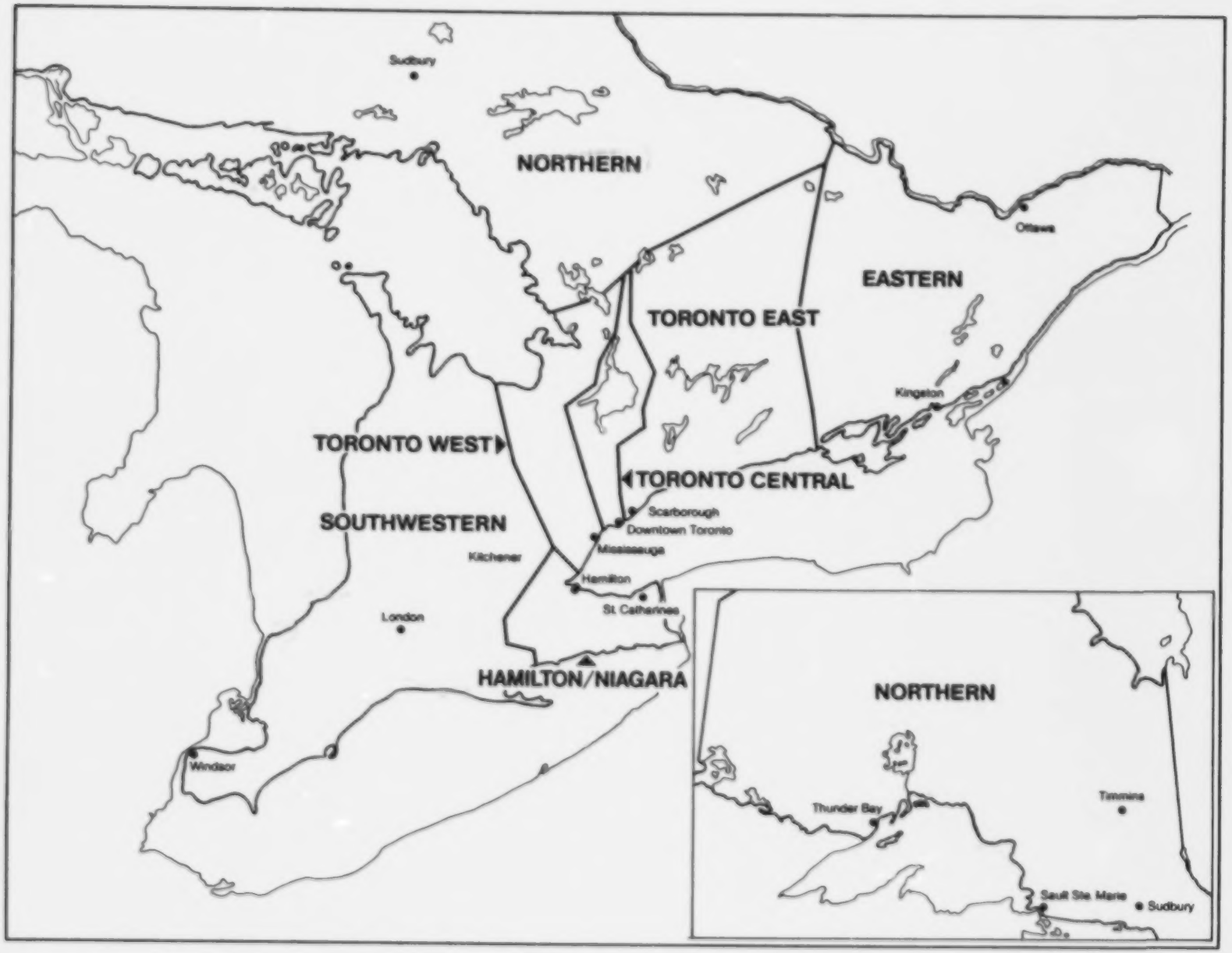
AIDS

There has been a growing number of inquiries about the application of the Code with respect to discrimination against persons with Acquired Immune Deficiency Syndrome (AIDS).

The Commission's policy is derived from section 9(b) of the Code which defines handicap to include "illness". Therefore, AIDS as an illness would fall within the definition of handicap. Persons with AIDS are protected under the Code in all social areas and may file complaints alleging the denial of the right to equal treatment without discrimination because of handicap.

INTERNATIONAL RESPONSIBILITIES

1983-1992 has been proclaimed the Decade of Disabled Persons by the United Nations. Following a second Federal-Provincial-Territorial Ministerial Conference on Human Rights in September 1985, ministers continued to express their support for the United Nations Decade of Disabled Persons and instructed the Federal-Provincial-Territorial Continuing Committee of Officials Responsible for Human Rights to engage in a consultation process for commitment to the issues of the disabled community during this decade.


Sudbury
NORTHERN
Ottawa
EASTERN
TORONTO EAST
Kingston
TORONTO WEST
TORONTO CENTRAL
Scarborough
Downtown Toronto
SOUTHWESTERN
Mississauga
Kitchener
Hamilton
St. Catharines
London
HAMILTON/NIAGARA
Windsor
NORTHERN
Thunder Bay
Timmins
Sault Ste. Marie
Sudbury

REGIONAL ACTIVITIES

1985/86

The Commission's programs are carried out in seven regions which comprise 15 district offices across the province, as indicated on the map on the facing page.

In 1984 the Conciliation and Compliance Division was restructured and reorganized to respond more effectively to the large increase in complaints, community problems, inquiries and referrals resulting from the new provisions of the Code. A major initiative of the Division has been to provide more effective services to the province by appointing two directors to supervise program delivery in all regions. One director supervises the Eastern, Hamilton-Niagara, Northern and Southwestern Regions as well as the Unit for the Handicapped, and the other is responsible for program delivery in the three Metropolitan Toronto regions.

Statistical tables reflecting complaints received during the fiscal year in each of the regions may be found in Table 1

Toronto Central Region

This region was created in 1981 when the Commission's caseload had expanded to a point where complaints in the Metropolitan Toronto area could no longer be effectively dealt with by the two existing regions, Toronto East and Toronto West. The boundaries of Toronto Central Region extend from the downtown core northward to Barrie and Burk's Falls.

The number of complaints registered during fiscal year 1985/86 stood at 313, which exceeds the number of complaints filed in any other region.

In fiscal year 1985/86, the region experienced an increase in complaints alleging discrimination because of handicap relative to those on other grounds. The 94 complaints based on this ground is second only to those based on race and colour which totalled 59.

The Commission has witnessed a greater awareness of and interest in human rights protection among Toronto's racial, ethnic and community organizations. Also evident is a growing trend for employers to request the Commission's approval of special programs under section 13 of the Code. Increasing numbers of employers have requested the assistance of staff in reviewing and amending their employment policies and practices to ensure that they comply with the provisions of the Code.

Although many of these employers have developed policies and programs to increase equality of opportunity for women and persons with handicaps, they are increasingly incorporating racial minorities into these plans and programs. For example, the Commission approved an affirmative action program under section 13 of the Code, thus enabling the North York Board of Education to collect data on the racial group membership of all applicants for positions with the Board and to gather and maintain such data on all employees. These measures will ensure that the Board will be able to monitor the progress of the special program, designed to increase the employment and promotional opportunities of members of racial minorities. The Board is providing regular reports to the Commission on the progress made under the program.

In addition to the Region's public education program, staff have developed and maintaining co-operative working relationships with employment and labour organizations, educational institutions and social service agencies in the Toronto area.

The Region dealt with several interesting issues that have significant implications for future human rights complaints. The Municipality of Metropolitan Toronto sought judicial review of the Commission's decision to assume jurisdiction in a complaint alleging discrimination because of marital status in the administration of social assistance benefits. The Divisional Court of the Supreme Court of Ontario dismissed this application and ruled that the type of welfare assistance under consideration falls squarely within the provisions of section 1 of the Code. In addition, a Board of Inquiry found that automobile insurance premiums based on sex, age or marital status are in contravention of the Code. This decision is under appeal.

Toronto East Region

The regional headquarters of the Toronto East Region were moved from downtown Toronto to Scarborough in 1982, thus ensuring that the Commission's services are easily accessible to the community. The increase in complaints and public educational commitments, evident since the Region was decentralized, indicates that the new office is meeting the needs of the Scarborough area. As well, in the four-year period since the office opened, the Region has witnessed a large increase in complaints from towns and cities beyond the Metropolitan Toronto area. The region includes Toronto's eastern suburbs and extends northward to Algonquin Park and eastward to Trenton.

The Region accounted for 189 complaints, or 14 per cent of the total complaints received by the Commission during the fiscal year. Of these, 59 related to handicap, 41 to race, 51 to sex and sexual harassment, 16 to age and the remaining 22 were distributed among all the other grounds.

Despite the increase in caseload, the staff have maintained a heavy public education schedule both in Metropolitan Toronto and major centres of the Region, such as Oshawa, other centres on Lake Ontario and the Peterborough and Lindsay districts. In most of these areas, public speaking engagements, seminars and workshops have been conducted in schools, with major manufacturers, employee groups, personnel associations and municipalities. A close liaison with all such organizations is maintained and encouraged.

Toronto West Region

The headquarters of this Region were also relocated in 1982 to the City of Mississauga. Toronto West includes Peel Region and part of Halton Region, extending to Oakville to the south and west. The regional boundary extends northward to the Nottawasaga Bay area.

The Region is heavily oriented to manufacturing and is developing rapidly in both industrial growth and population size. Indeed, the metropolitan Toronto area received 489 complaints alleging discrimination in employment, or more than 50 per cent of the 957 employment complaints filed throughout the province.

Complaints alleging discrimination because of handicap outnumbered cases registered on any other single ground, at 58. Complaints relating to the race and

colour provisions of the Code represented the second highest complaint category, at 45.

The Region's programs in public education and consultation were particularly active during the fiscal year; the staff participated in many undertakings with educational institutions, personnel associations, community organizations and senior-level managers and employers. However, the Region's major emphasis was placed on reducing a large backlog of complaints, since the volume of complaints in this heavily industrialized area had increased greatly in the past several years.

Eastern Region

The Commission's Eastern Region covers the geographical area east of Trenton, extending northward from Lake Ontario and the St. Lawrence River to the Quebec border. Its headquarters are in Ottawa and a district office is located in Kingston.

Located in the middle of a bilingual district, the Ottawa regional office offers its services in both official languages to all of its clientele. As human rights awareness rapidly transcends the confines of urban centres and moves into rural areas, more unilingual Francophones are exercising their rights under the Code.

One hundred and thirty-eight complaints, or 10 per cent of the Commission's total, were received in this Region during fiscal year 1985/86.

Complaints filed on the grounds of handicap and sex constituted the two largest categories during the fiscal year, followed by complaints based upon race or colour. These grounds accounted for 47, 33 and 16 complaints received in the region respectively. The investigation of complaints alleging discrimination because of handicap frequently revealed discrimination based on false and stereotypical assumptions about the abilities of persons with handicaps and an apparent hesitation to attempt to accommodate the needs of a prospective handicapped employee. Sexual harassment complaints increased in volume during the year and pregnancy-related complaints were on a steady rise. Each case potentially raised additional issues such as maternity leave, benefits, seniority, retroactive pay, salary revisions, promotional opportunities, attendance/absenteeism, risks to health and safety and reasonable accommodation. In this regard, five complaints initiated by women who were not entitled to retroactive salary increases while on maternity leave were successfully resolved. Changes to the employer's policy and practices were put in place to correct the discriminatory treatment.

The Region's programs in public education, consultations and race relations were particularly active during the fiscal year. The Eastern Region and the Race Relations Division hosted a symposium in August 1985, designed to introduce employers and senior managers to the Workbook on Equal Opportunity in Employment, produced by the Race Relations Division.

Northern Region

This Region, headquartered in Sudbury, has four district offices in Kenora, Thunder Bay, Sault Ste. Marie and Timmins.

The Northern Region constitutes 85 per cent of the province's geographical area and ten per cent of its population. For this reason, the regional staff, as well as Commissioners, have continued to expand the Region's outreach program to those

communities that do not have immediate access to the services provided by the Region's five offices. As well, toll-free telephone numbers have been provided to all residents of northern Ontario.

The region received 154 complaints during the fiscal year, with the majority alleging discrimination on the ground of handicap.

Several cases that were referred to Boards of Inquiry during the year were settled prior to the hearing. In one, a black man working in a junior management capacity for a large retail outlet store that is part of a nationwide chain alleged that he had been subjected to harassment because of race and colour. He further alleged that when he brought the matter to the attention of a senior manager, his complaint was ignored. He was later dismissed.

The investigation revealed that the complainant had been consistently teased and called racially derogatory names by his co-workers. Several employees had undermined his work performance so that he appeared inefficient and unable to meet production levels. The complainant had been dismissed as a result of his failure to meet these levels. His allegations were supported by several past and present employees of the store.

As settlement, the respondent company agreed to pay the complainant $17,000 for lost wages, moving expenses and general damages for mental anguish. In addition, the respondent agreed to hold a seminar for management at that location on the legal responsibilities of employers under the Code, and to the posting of a Code card in each store in Ontario.

Two mining companies were opened in the Hemlo gold fields during the fiscal year. Senior members of staff visited the area to assess the impact of these new companies on the employment of Native people residing in several communities bordering the Hemlo area: Manitouwadge, Marathon, White River, Pic Heron Bay Reserve, Pic Mobert Reserve and Heron Bay. The companies undertook affirmative recruitment efforts with Native Band Councils with a view to developing a labour pool of Native workers, including women for both traditional and non-traditional jobs. Officials of the Pic Mobert and Heron Bay Bands have worked with the companies in designing affirmative action strategies, which include basic skills development and employment orientation courses on both reserves.

The Commission's Chairman wrote to the companies advising them that the Commission is pleased with their efforts to date and will be reviewing their progress in hiring Natives in the summer of 1986.

In the area of consultations, a number of initiatives were launched during the year. Officials of the Timmins Public and Separate School Boards met with staff to discuss the development of race relations policies.

The Northern Supervisor continued to participate as a member of the staff working group of the Inter-ministerial Cabinet Committee on Native Affairs. The Committee reviews all aspects of the delivery of government programs to Ontario's Native communities.

Southwestern Ontario Region

The Southwestern Region comprises a number of primarily industrial or commercial urban centres serving a nearby agricultural heartland. The impact of the recession is

still being felt in some areas, and competition for jobs and accommodation is keen. The number of complaints filed during the year was 196.

The Commission's programs are delivered through district offices located in Windsor, London and Kitchener, with London as the regional headquarters. The Region includes Simcoe and Brantford, extends eastward to Guelph and continues up Number 6 Highway to Owen Sound and the Bruce Peninsula.

The larger communities are slowly accommodating their changing population mosaic as more racial minorities arrive and enter the work force. At the same time, women are assuming non-traditional roles in greater numbers, seeking work outside the home and in job categories previously closed to them.

There are six Native reserves in the area, and many Native people live in the cities.

In light of the Region's changing population composition and the increased emphasis on affirmative action and equal employment opportunity, the thrust of the Southwestern Region's educational initiatives have focused on these measures as additional long-term remedies for discrimination.

During the fiscal year, members of the Region's staff made presentations to the Lambton County, London and Windsor Boards of Education, the deans and senior officials of Fanshawe College in London, the Golden Triangle Area Affirmative Action Committee and Petrosar in Sarnia, and provided regular consultative services to these and many other groups. The staff also addressed the London Inter-ministerial Affirmative Action Committee, the affirmative action committees of three government ministries (Industry, Trade and Technology, Community and Social Services and Tourism and Recreation) and the Southwestern Regional Network for Affirmative Action in Education on the subject of systemic discrimination and affirmative action.

The University of Western Ontario, the Regional Municipality of Waterloo and the City of Windsor all received consultation services from staff regarding their affirmative action programs.

In the investigation of complaints, the number alleging systemic discrimination had increased, citing employment systems that were working against the equitable treatment of women, Native people, racial minorities and persons with handicaps. The staff established liaisons with the Ministry of Citizenship and Culture and Employment and Immigration Canada in various centres and requested data on the work force participation of racial and ethnic minorities, women and handicapped persons in order to conduct statistical analyses as a diagnostic tool to establish whether systemic discrimination has occurred, and upon which to form the basis for affirmative remedies.

Complaints alleging discrimination because of handicap continued to represent the highest proportion of the caseload at 41 cases. In many such cases the Commission and complainants are assisted in the resolution of complaints by self-help and community groups, which are well represented in most localities.

Another trend is the increase in inquiries and complaints alleging discrimination in accommodation on the grounds of race, family status, marital status and sex. This appears to have resulted in part from the lack of affordable family housing. Regional staff have consulted with landlords and local housing authorities and have participated in conferences on the issue.

In November 1985 a Board of Inquiry held in London addressed a complaint alleging discrimination because of race in housing accommodation. The complainant, a black woman, was awarded $2,500 in general damages and pre-judgement interest. This represents a high watermark in cases of this nature, in which damages have traditionally been significantly lower. The case should be a significant precedent in dealing with this ongoing problem.

Other regional Boards of Inquiry held this year highlighted issues of forced early retirement for police officers and firefighters, access to non-traditional jobs for women and sexual harassment.

Hamilton-Niagara Region

The Hamilton/Niagara Region was established in 1984 because the human rights issues in the Southwest had increased to the point where they could no longer be adequately addressed within the former regional boundaries.

Regional headquarters are located in Hamilton and there is a district office in St. Catharines. The Region covers the Golden Horseshoe and Greater Hamilton areas. The total number of complaints received during the fiscal year was 186, or 14 per cent of all cases throughout the province.

During fiscal year 1985/86, the Region saw an increase in complaints citing the grounds of race, age, sex and sexual harassment. The number of complaints based on handicap also increased during the year. Although the types of handicap varied widely, there was a substantial number of complaints alleging discrimination because of a back injury.

In the area of racial discrimination, the highest award of damages ever granted by a Board of Inquiry occurred in the case of Scott and Foster Wheeler. Having found that the employer discriminated against the complainant because of race and colour when it refused to refer him for work on a project in Jamaica, the Board awarded him damages in the amount of $49,913.93. The decision and order are under appeal.

Settlements were reached in three complaints initiated by the Commission against several taxicab companies alleged to have complied with requests of customers not to send an East Indian driver. Among the items of settlement was an agreement on the part of the respondents to publish their policies of non-discrimination in the local newspaper. Several additional complaints involving the same allegations against another taxicab company were referred to a Board of Inquiry when conciliation failed to achieve a settlement. The hearing was convened on March 19, 1986.

A heightened awareness of and interest in human rights and the provisions of the Code are evident among employers, unions and community groups in the Region. Plans are underway to organize a one-day seminar for management personnel early in fiscal year 1986/87.

EXAMPLES OF

COMPLAINTS OF DISCRIMINATION

1985/86

EMPLOYMENT

Handicap

The complainant was terminated from her job as a machine operator after one year when she suffered a work-related injury to her shoulder. While under treatment for the injury, the company's physician discovered a chronic condition affecting the tendons in her arm and advised the employer that the tendon condition could make her vulnerable to more injuries. The woman was dismissed with the explanation that the condition could render her unable to perform her duties. She was also informed that she should have revealed the condition in response to a question on the employment application form about her medical history.

Her complaint alleged discrimination in employment because of handicap as well as a violation of the provisions of the Code respecting permissible questions on application forms.

The Commission's investigation revealed that the complainant did suffer from a chronic condition of the tendons, related to repetitive arm movements in her previous job. However, her present job did not include the same repetitive arm movements. She had performed her duties as a machine operator with the respondent company for one year without any problems, and her shoulder injury was totally unrelated to her previous tendon condition. As a result, there was no evidence that her condition, either now or in the future, would affect her ability to do the job, nor was there any objective test carried out to determine whether or not the complainant was able to perform the essential duties of her current position.

The company's application form contained questions relating to handicap, age, marital status and family status, contrary to section 22 of the Code. It is Commission policy that such inquiries on an application form are inappropriate.

In settlement of the matter, the respondent agreed to compensate the complainant in the amount of $1,300, representing earnings lost before she found another position, and to amend its application form to ensure that the questions are in compliance with the provisions of the Code. In addition, a directive was sent to all employees setting out the company's policy of non-discrimination.

* * * *

The complainant, a man with diagnosed schizophrenia, had been employed by a manufacturing company for several months. He alleged that he was laid off, with the explanation that he had behaved aggressively towards several co-workers. His complaint alleged discrimination in employment because of handicap.

A Fact Finding Conference was held among the parties to the complaint to determine their positions with respect to the allegations and to attempt to effect a resolution of the complaint. Medical documentation was provided to show that the complainant's disorder was controlled. He had no problems in relating to and working with other employees. The evidence indicated that other employees both teased and harassed him. Any co-workers involved in fights were temporarily suspended, whereas the complainant was dismissed. The evidence supported the allegations.

The following settlement between the parties was reached at the conclusion of the Fact Finding Conference:

- the respondent agreed to compensate the complainant in the amount of $7,500 representing earnings lost during the period he was out of work;

- a human rights seminar was conducted for the respondent's employees;

- the respondent would post Code cards in the plant and in public areas of the company.

* * * *

The complainant had been employed as a packer with the respondent company for several months. In acordance with company policy, she underwent a medical examination before moving from probationary employment to regular employment. During the medical examination, she informed the company's physician that she had experienced loss of sensation and strength in one hand a year before, but had since had no recurrence of the problem. She alleged that she was subsequently dismissed with the explanation that the company doctor had diagnosed multiple sclerosis. She filed a complaint with the Commission alleging discrimination in employment because of handicap.

During the investigation, the company's personnel manager indicated that the physician had expressed concerns about the complainant's ability to perform her job in the future in the light of his diagnosis. However, her job performance during her employment with the respondent was described as excellent. In addition, the medical evidence provided by her family physician indicated that he had not confirmed a diagnosis of multiple sclerosis and had identified no recurrence of the symptoms of which she had complained a year before. There was no evidence to indicate that she could not safely perform the essential duties of her job.

The parties agreed to the following terms of settlement following conciliation:

- the respondent would compensate the complainant in the amount of $8,500 for earnings lost as a result of discrimination;

- the complainant would be placed on the recall list immediately;

- her seniority was restored, retroactive to the date of her dismissal;

- the respondent would write a letter of apology to the complainant.

The complainant was recalled shortly after the conciliation negotiations were concluded.

* * * *

The complainant was a man with a severe speech and hearing impairment who communicated by sign language. He had been employed as a warehouse worker with the respondent company for six months. He alleged that at the time of hiring he had been promised a wage increase after three months of service, but had not received the increase despite the fact that non-handicapped employees had been given a raise. As a result, he took the matter up with his supervisor and a dispute between them ensued. He was then dismissed. He filed a complaint alleging discrimination in employment because of handicap.

During the Fact Finding Conference, the personnel manager was asked whether any other employees had ever been dismissed following disputes with their supervisors. He admitted that the complainant had been the only employee to be released for this reason, and also confirmed the complainant's allegation that he had been the only employee to be denied a salary increase after three months. The company representatives had no explanation for the denial.

In settlement of the complaint, the respondent compensated the complainant in the amount of $1,200 representing wages lost because of discrimination and wrote him a letter of apology. He had obtained suitable employment elsewhere, and therefore did not request an offer of reinstatement from the company.

* * * *

The complainant, a woman with epilepsy, suffered a seizure several days after she had begun her employment as a waitress with the respondent restaurant. She was taken to hospital by ambulance, and returned to work two days later. She alleged that her employment was terminated two weeks after this incident and filed a complaint alleging discrimination because of handicap.

During the investigation, the respondent stated that the complainant's seizure had not been a factor in her dismissal, and that he knew that she was an epileptic at the time she was hired. Management employees and co-workers informed the Commission that the complainant frequently fell behind in her orders and reacted very negatively to the pressures experienced by staff during peak periods. The evidence indicated that the complainant lacked the ability to perform the essential duties of her position. The respondent's personnel records revealed that other waitresses had been dismissed under the same circumstances.

Following a review of the findings of the investigation, the complainant agreed that the evidence did not indicate that discrimination contrary to the Code had occurred.

* * * *

Race, Colour, Ancestry, Ethnic Origin, Creed

A woman of German origin who was employed as an assembler alleged that she and a co-worker worked on the same line. Her co-worker left the line, but the machine operator did not slow down his production. Consequently, several items were damaged. Although both of the assemblers were cautioned about the incident only the complainant was dismissed. Her complaint alleged discrimination in employment because of place of origin, ethnic origin and ancestry.

The investigation revealed that the complainant's job performance had been unsatisfactory during the three months she had worked for the company. Documentation indicated that she had refused several times to follow the instructions of her foreman and that her errors had caused damage to the product. The evidence gathered did not support the allegations. The case was dismissed by the Commission for the following reasons:

- the complainant had been employed with the respondent for three months as a box catcher. During that period she received several warnings about her job performance;

- the complainant's co-workers, the leadhand, her immediate supervisor and the Vice-President of Manufacturing, who is also of German origin, tried to assist the complainant, without success, to improve her performance;

- on September 28, 1983, she disregarded the company's guidelines and, as a result, several good boxes were discarded, causing the company financial loss. Her employment was then terminated;

- the complainant refused to co-operate with and take instructions from her leadhand because he is black. She often referred to him as "the black bastard";

- the workplace is very racially and culturally diverse and there was no perception of discrimination among employees who were interviewed.

* * * *

A black man of Barbadian origin had been employed as a welder by the respondent company for four years. He alleged that he was dismissed after his involvement in a

fight with two white co-workers. He stated that the only discipline received by the co-workers was a two-week suspension, despite the fact that one of them had initiated the dispute. He further alleged that the company's own investigation of the incident was prejudiced in favour of the white employees. His complaint alleged discrimination in employment because of race, colour, ethnic origin and place of origin.

During the investigation, the Commission's officer interviewed the company's labour relations manager, who had conducted an internal investigation of the matter. The manager claimed that several employees had stated that the complainant had been the only employee to be armed with a tool during the fight, and that the decision to dismiss him was based on this evidence.

The Commission established that ten employees - eight whites and two blacks - had witnessed the fight. However, only the whites had been questioned during the company's investigation. While they were asked if the complainant had used a tool in the fight, they were not asked if either of the white co-workers had been armed. Witnesses confirmed that two of the men had used tools, and medical records obtained from the physician who treated the complainant for his injuries confirmed that he had been hit with a sharp instrument.

The Commission also determined that prior to this incident, white employees armed with tools had been involved in fights. These employees had usually been disciplined by a two-week suspension.

Further evidence indicated that racial harassment and name-calling was a frequent occurrence on the shift in question, which was not the complainant's regular shift. Of the two black employees on the shift, one had made his superiors aware of his objections to the harassment, yet the company took no remedial action. A former employee, who is also black, informed the Commission that after he complained to his foreman of harassment he was transferred to another shift. This man resigned his position before reporting to his new assignment because he felt the proposed resolution of the problem was inadequate. Other statements made by the complainant's co-workers tended to confirm an atmosphere of racial bias among both workers and supervisory employees. The evidence indicated that discrimination had occurred, as alleged in the complaint.

In settlement of the complaint, the parties agreed upon the following terms:

- the complainant would be reinstated without loss of seniority;

- he would be compensated in the amount of $10,755.54 representing earnings lost as a result of discrimination;

- the complainant had initially been penalized by a one-week loss of pay and a notation on his personnel file that he had been involved in an altercation. The lost wages were restored and the notation removed from his file;

- the respondent agreed that a series of seminars on human rights and racial harassment would be conducted for all of its management employees.

* * * *

The complainant, a black woman of Guyanese origin, had worked as a clerk for the respondent company for four years and had consistently received positive evaluations of her work performance, and annual merit increases. She alleged that a new supervisor was hired after this period, and she began to experience discriminatory treatment with respect to opportunities for overtime and upgrading courses. She also received negative appraisals on her work record. Several months later, she was dismissed with the explanation that her work performance was below company standards. Her complaint alleged discrimination in employment because of race and colour.

At the Fact Finding Conference, the respondent claimed that the complainant's work record had been unacceptable for several months. However, documents and records revealed that the complainant's percentage of errors was lower than that of many of her co-workers and that she had been performing at levels equal to or better than many of her white counterparts. The weight of the evidence lent support to her allegations.

In settlement of the complaint, the respondent agreed to pay the complainant the amount of $4,000, in compensation for earnings lost because of discrimination and mental anguish. She had obtained alternative employment and did not wish to be rehired by the company.

* * * *

In accordance with section 31(2) of the Code, the Commission initiated complaints against three taxicab companies, alleging that they had honoured the requests of customers not to dispatch drivers who are of East Indian ancestry or origin. It was further alleged that in complying with such requests, the respondents had denied equal treatment in employment to qualified East Indian drivers, in contravention of the Code.

The complaints were initiated following reports of surveys of the three taxi companies by news reporters indicating that the companies discriminated against East Indian drivers.

The evidence was reviewed with the respondents at the Fact Finding Conference, and the following terms of settlement were agreed to among the parties:

- the respondent would provide a letter to the Commission indicating that it is and will continue to be an equal opportunity employer;

- the respondent would issue a letter of assurance to the Commission stating that it would uphold the provisions of the Code;

- the respondent would publish in the local newspaper a public notice of its non-discriminatory policy;

- the respondent would issue a memorandum to its dispatchers, other employees and management staff stating that honouring any discriminatory request for service would result in progressive disciplinary action up to and including termination of employment;

- the respondent would issue a memorandum from management to dispatchers and other employees stating that any discriminatory treatment of any employees on prohibited grounds of the Code would result in progressive disciplinary action up to and including termination of employment;

- the respondent would post the Commission's Code cards in all public premises and offices of the company.

* * * *

The complainant alleged that he had been harassed in his employment and unfairly disciplined by his supervisor because of creed, ancestry, place of origin and ethnic origin. He is a Christian of Turkish ancestry and origin.

Following a review of the allegations, the Commission decided to refuse to deal with the complaint under section 33 of the Code. Under this section, the Commission may decide not to deal with a complaint if it is not within its jurisdiction; is trivial, frivolous, vexatious or made in bad faith; the facts on which the complaint is based occurred more than six months before the complaint was filed; or there is a procedure under another Act that is more appropriate in the circumstances.

The Commission provided the following reasons for its decision to the complainant:

- the complainant has not denied that he made the mistakes for which he had been disciplined;

- the complainant has filed union grievances to deal with disciplinary action, which he believes was too severe;

- the complainant can provide no reasonable grounds for believing that he was discriminated against on religious grounds except that he was asked his religion on the company application form when he was hired for work seventeen years ago;

- the complainant can provide no reasonable grounds for believing that he has been discriminated against because of his ancestry, place of origin, ethnic origin or citizenship except for a generalized animosity that he believes Canadians harbour against Germans and Turks because of their role in history and in war;

- beyond a generalized belief that all "Canadian Christians" treat all "non-Canadians" and all "non-Christians" badly, the complainant can provide no

particulars of anyone other than himself being treated unequally on the grounds alleged;

- for these reasons, the Commission is of the opinion that the complaint is frivolous in that there is no factual basis for the complaint and the allegations are devoid of particulars;

- moreover, if the complainant is correct that the discipline imposed for acknowledged mistakes is excessive, that matter may be properly addressed through the grievance procedure.

* * * *

The complainant, a black Canadian, had worked as a service representative for the respondent for 11 years. Shortly before he filed his complaint, a co-worker used racially derogatory epithets, told racially disparaging jokes and called him racially offensive names. The complainant alleged that he brought the matter to the attention of his supervisor after two such incidents had occurred and told the co-worker that he had done so. However, the supervisor did not intervene, and the co-worker threatened to challenge him to a fight if he approached management again. The supervisor subsequently suspended both employees for two days with the explanation that they needed time to "cool off". The complaint alleged discrimination and harassment in employment because of race.

During the investigation, several employees indicated that they had witnessed several incidents of racial harassment involving the complainant and stated that the complainant's co-worker had always initiated the disputes that had occurred. The supervisor stated that he had suspended the complainant as well as the co-worker because he believed that "most disputes between workers have two sides." The complainant was the only non-white member of staff. The findings of the investigation tended to support the allegations.

In conciliation, the parties reached a settlement based on the following terms:

- the complainant's suspension was reduced and that of the co-worker was increased;

- the respondent agreed that the Commission would conduct a seminar on racial harassment and human rights for management and supervisory employees;

- the employer issued a directive to all employees stating its policy on non-discrimination and racial harassment.

* * * *

The complainants, who were Seventh Day Adventists, alleged that they had been employed as assemblers for the respondent manufacturing company for several weeks when they were told to work on the Friday evening shift. They informed their

supervisor that the shift would conflict with their Sabbath observances and offered to work any evening or night shift except on Fridays. When their employment was terminated because they refused to work the Friday evening shift, they filed complaints alleging discrimination in employment because of creed.

At the Fact Finding Conference, the respondent claimed that the complainants had stated on the employment application form that they were willing to work all three shifts. However, an examination of their applications revealed that they had advised they could work all shifts except for the period after sunset on Friday.

The Commission's officer explored the possibility of accommodating the complainants' religious beliefs. The respondent indicated that there were some departments that did not involve shift work. In settlement, the company agreed to reinstate the complainants and assign them to positions where they would not be required to work on Friday evenings or Saturdays.

* * * *

The complainant, a man of East Indian origin, alleged that he had been dismissed from his teaching position because of colour, ancestry, place of origin and ethnic origin. The respondent requested the Commission to refuse to deal with the complaint under section 33(1)(a) of the Code.

After reviewing the matter, the Commission decided not to deal with the complaint and provided the parties with the following reasons:

- the complaint was dealt with by a Board of Arbitration appointed under the Labour Relations Act. The Board of Arbitration ruled that the complainant be reinstated to his former position without loss of benefits, and he has been compensated in part for earnings lost. The Board of Arbitration found no evidence of unlawful discrimination, and the Commission is of the view that the award constitutes a fair and reasonable remedy.

- The Commission, therefore, is of the view that this matter has been appropriately dealt with under another Act.

* * * *

The complainant, who is of Trinidadian origin, alleged that his employment had been terminated because of race and colour. The Commission had refused to deal with the complaint under section 33(1)(d) of the Code, which provides that the Commission may decide not to deal with a complaint if the facts upon which it is based occurred more than six months before it was filed, unless the delay was incurred in good faith and no substantial prejudice will result to any person affected by the delay.

The complainant sought reconsideration of this decision under section 36 of the Code. During the reconsideration process, it was determined that the complainant had contacted the Employment Standards Branch and Ontario Labour Relations Board to discuss his concerns, but he had not been referred to the Commission.

The Commission reversed its decision not to deal with the complaint and provided the parties with the following reasons:

- the complainant, in good faith, did not file his complaint within the six-month period because he did not know that such an avenue of redress was open to him;

- although 11 months had elapsed between the alleged discrimination and the filing of the complaint, the respondent company would not be substantially prejudiced because many of the witnesses pertinent to the complaint were still employed by the company.

During the investigation, it was learned that the manager who had dismissed the complainant had not acted in accordance with the company's policy on progressive discipline, and that the complainant's race and colour had played a part in the decision to release him. In settlement, the company agreed to revise its personnel policies to ensure that they comply with the provisions of the Code and to compensate the complainant in the amount of $6,500 for earnings lost as a result of discrimination.

Sex, Sexual Harassment, Marital Status, Age

The complainant alleged that she learned that she was pregnant two months after beginning her employment as a clerk in the respondent company, and that she was dismissed from her job when her employer learned about her pregnancy. Her complaint alleged discrimination in employment on the basis of sex.

At the Fact Finding Conference, the complainant stated that her employer had asked her if she had any children during her job interview. The respondent admitted that when she informed him that she had a teenaged son and no pre-school-aged children, this influenced his decision to hire her. The evidence tended to support the complainant's allegations.

The parties agreed to the following settlement:

- the respondent compensated the complainant in the amount of $5,800 representing earnings lost as a result of discrimination;

- the respondent provided the complainant with a letter of reference;

- the company issued a directive to its employees setting out its policy of non-discrimination.

* * * *

The complainant had worked as a secretary with the respondent company for seven years under three different executives. She alleged that she was assigned to a new boss, who consistently made vulgar and sexually explicit remarks to her. When she was unable to convince him that these remarks were unwelcome, she raised the matter with the manager of the department and informed him that this conduct was undermining her ability to perform her job duties. She alleged that the manager advised her that she should resign. She did so and brought the problem to the attention of a senior executive in the company, who told her not to pursue the matter. She then filed a complaint with the Commission alleging sexual harassment in the workplace.

The investigation disclosed that other women who had reported to the manager in question had also been subjected to embarrassing and compromising remarks. Personnel records supplied by the company indicated that the complainant's work performance had always been excellent. The evidence gathered supported the allegations.

In conciliation, the following terms of settlement were agreed to among the parties:

- the respondent agreed to compensate the complainant in the amount of $9,700 representing earnings lost during the period in which the complainant looked for a new job;

- the company agreed that the Commission would conduct a seminar on human rights and sexual harassment for management and supervisory employees;

- the respondent would circulate a directive among all employees stating its policy on sexual harassment.

* * * *

The three female complainants had been employed as clerk-typists in the respondent company for periods ranging from several months to one year. They alleged that the manager of their department, a male, had made sexual advances towards them during the course of their employment. His repeated invitations to spend an evening with him had been refused, according to their allegations, and the complainants had made it clear that his suggestive remarks were unwelcome. All three women resigned their positions, but did not inform senior management that they had done so because of sexual harassment because they believed this would jeopardize their chances of obtaining favourable references from the company.

During the investigation, the Commission's officer interviewed other women who were employed by the company or who were former employees. Some of them stated they had also been subjected to sexual harassment by the individual respondent. Others had observed him making sexual advances towards his female employees. The weight of the evidence supported the allegations.

Following conciliation discussions, the following terms of settlement were agreed upon by the parties:

- the three complainants each received monetary compensation for earnings lost because of discrimination and mental anguish in the amounts of $9,000, $2,800 and $500;

- both the corporate and individual respondents wrote letters of apology to each complainant and letters of assurance of the company's non-discriminatory policy to the Commission;

- the corporate respondent instituted a policy with respect to sexual harassment and communicated the new policy to staff;

- the company's chief executive officer wrote to the individual respondent informing him that further sexual harassment on his part would result in serious disciplinary action. Copies of this letter were placed on his personnel file and sent to the Commission.

* * * *

An unmarried male employee of a Crown Corporation alleged that single workers who are transferred to another location are entitled to a one-month allowance for board and lodging, whereas married employees may receive a four-month allowance for this purpose. The complainant was transferred to Northern Ontario and given an allowance for one month's living expenses. He filed a complaint alleging discrimination in employment because of marital status.

At the Fact Finding Conference, the respondent confirmed that its Collective Agreement provided for a differential living allowance for married and single employees, in contravention of the Code. In settlement of the matter, the respondent agreed to reimburse the complainant for his living expenses for three months, which totalled $3,455.94 and to modify the Collective Agreement to remove the discriminatory clause. In addition, policy directives were issued to all supervisors advising them of the new policy.

* * * *

The complainant was employed as a cashier by the respondent company in 1974. She received a promotion to head cashier five years later. She alleged that when the position of assistant manager became available in 1985, she was passed over in favour of a male applicant who had less experience than she had, and whom she had trained. Her complaint alleged discrimination in employment because of sex.

During the investigation, the respondent claimed that the complainant had reached the limits of her ability as head cashier and, in any case, had not expressed an

interest in the promotional opportunity. The Commission's officer interviewed witnesses at the company and learned that the management had established an informal set of personnel procedures several years previously, when the work force was small. Problems with these procedures had developed as the staff increased. The evidence revealed that the managerial staff were all male and all other employees were female.

Interviews with the respondent's employees demonstrated that the complainant had always performed her duties very competently. The complainant's co-workers stated that most of the members of the managerial staff displayed a condescending attitude towards the female members of staff. The weight of the evidence supported the complainant's allegations.

During conciliation, the respondent agreed to compensate the complainant in the amount of $5,000 representing earnings lost because of discrimination and damages for mental anguish. Because the complainant had left the company for another poistion, she did not request a promotional opportunity. Other items of settlement included:

- a commitment on the part of the respondent to circulate a directive to all employees affirming its policy of equality of opportunity and setting out the policy that the company will base its promotional decisions on merit without regard to sex;

- a human rights seminar would be conducted for managers and members of the board of directors.

* * * *

The complainant alleged that she had worked as a waitress in the respondent restaurant for three weeks when the chef began making physical sexual advances towards her. These advances continued despite her repeated efforts to convince him that they were unwelcome. When the chef terminated her employment, she filed a complaint alleging sexual harassment. She also alleged that her employer had taken reprisal action against her because she had refused his advances.

At the Fact Finding Conference, the chef denied having made the advances. However, the restaurant manager admitted that he had conducted his own investigation of the matter when he questioned why a valued and competent employee had been dismissed. The manager acknowledged that an employee had seen the chef making sexual advances towards the complainant. The manager confronted the chef about the incident. The complainant's husband stated that she had informed him about these incidents and had also discussed them with her sister. The evidence lent support to the complainant's allegations.

During conciliation discussions, the parties agreed to the following terms of settlement:

- the restaurant manager and the chef wrote letters of apology to the complainant and jointly compensated her in the amount of $2,000 for earnings lost because of discrimination and for mental anguish;

- the president of the company, which is a chain operation, agreed to develop a policy on sexual harassment and circulate it to all employees.

* * * *

A 64-year-old male salesman alleged that his employer had significantly reduced his sales territory for the last three months of his employment, just prior to his retirement. He stated that a much younger person was hired during the period and was assigned to service most of the complainant's territory. His complaint alleged discrimination in employment because of age.

At the Fact Finding Conference, the respondent admitted a deliberate effort to phase the complainant out by reassigning his territory despite the fact that he had an excellent sales record with the company.

At conciliation, the complainant provided information indicating that he had lost $5,200 in sales because of the company's decision. The respondent compensated him in this amount, thus settling the complaint.

ACCOMMODATION, GOODS, SERVICES AND FACILITIES

Race, Colour, Ancestry, Ethnic Origin, Receipt of Public Assistance

A black woman alleged that she, her husband and three children had resided in the respondent apartment building for seven years without incident. When a new superintendent, who was white, took over the building with his wife and children, the complainant alleged that the white children of the superintendent began to call her own children racially derogatory names and to tease them whenever they went outdoors to play. On two occasions, the complainant called the police when her efforts to rectify the problem had failed. When the complainant and her husband attempted to discuss the problem with the superintendent and his wife, a dispute between the two couples developed. The complainant also alleged that the owner of the building did not take adequate steps to resolve the matter when it was brought to his attention. Her complaint alleged discrimination and harassment with respect to accommodation because of race and colour.

During the investigation, the complainant's neighbours informed the Commission's officer that they had witnessed the alleged incidents, and that the complainant's children had always been well behaved and were not responsible for starting any fights with the superintendent's children. Two neighbours said that they had overheard the superintendent telling his children that he didn't want them to play with blacks. The owner of the building confirmed that he had been made aware of the problem, but had only approached the superintendent about it on one occasion. However, he said that he had subsequently dismissed the superintendent for poor work performance, and he wished to resolve the complaint because the complainant and her family had been good tenants.

In settlement, the parties agreed that the respondent would compensate the complainant in the amount of $1,500 for the mental anguish that resulted from the discriminatory conduct.

* * * *

The complainant, who was in receipt of mother's allowance benefits, alleged that she and a friend were denied the opportunity to rent an apartment and were given the explanation that it was company policy to refuse any applicant who received welfare benefits. Her complaint alleged discrimination in accommodation because of receipt of public assistance.

The complainant stated at the Fact Finding Conference that she had informed the building manager that the combined income of herself and her friend was more than adequate to meet the rental payments. The respondent admitted that the allegations were true, but did not realize that the policy contravened the Code.

The parties then reached the following settlement:

- because the complainant had found suitable accommodation, she did not seek an offer of the next available apartment in the respondent building. The respondent agreed to compensate her in the amount of $200 representing out-of-pocket expenses and damages for mental anguish;

- the respondent informed the complainant that any application she may wish to make in the future would be considered on the same basis as all others;

- the respondent would write the complainant a letter of apology, and provide the Commission with a letter of assurance of its non-discriminatory policy;

- Code cards would be posted on the premises.

* * * *

The complainant, who was in receipt of workers' compensation benefits, had applied to rent an apartment in the respondent's building. He alleged that the landlord expressed the concern that he would not be able to pay the rent when his benefits ran out and that, in any case, the total family income was insufficient to meet the rent. On being refused the apartment, he filed a complaint alleging discrimination in accommodation because of receipt of public assistance.

At the Fact Finding Conference, the complainant pointed out that there were currently tenants in the building on social assistance, and he provided evidence that he had no debts and a good credit rating. Moreover, the complainant was paying more rent at his present address than the rental for the respondent's apartment. The respondent affirmed that he had a number of tenants who were in receipt of social

assistance and, in settlement of the matter, offered to rent an apartment to the complainant and to clean and decorate it at no charge in lieu of monetary compensation for insult to dignity. The respondent also provided assurances of his non-discriminatory policy and agreed to post Human Rights Code cards in the premises.

* * * *

CONTRACTS, GOODS, SERVICES AND FACILITIES

Marital Status, Handicap, Sex

The complainant, who had recently separated from her husband, alleged that she was informed by her insurance company that her automobile insurance premium had been increased from $300 per year to $1,200 per year because of her husband's poor driving record. She stated that the company refused to lower her rate despite her assurance that her husband no longer had access to her car. The company also refused her request that her policy be changed from family to single coverage. Her complaint alleged discrimination with respect to contracts because of marital status.

The complaint was dealt with by a telephone call to the respondent, which confirmed the company's position. When the Commission's officer explained the related provisions of the Code, the company agreed to raise the complainant's annual premium only to $320. When she informed the Commission that she had received a letter to this effect from the company, the complaint was closed.

* * * *

The complainant, a man who is deaf, alleged that he was denied an opportunity to obtain an interpreter by a police officer who was investigating an automobile accident in which he was involved. The complaint alleged denial of equal treatment with respect to services and facilities because of handicap.

The Commission's officer arranged a meeting with the complainant and officials of the Police Force, at which it was agreed that the Chief of Police would issue a standing order to all police officers advising them to ensure that an interpreter is provided to persons with a hearing impairment who are being questioned by the police. The complainant expressed his satisfaction with this settlement.

* * * *

The complainant had made an appointment with a sales representative of the respondent company to visit her home and show her a line of merchandise she was planning to purchase. She alleged that when the representative had shown her the product, she agreed to place an order for it. However, the representative informed her that he could not make the sale without her husband's approval, in accordance with company policy. She filed a complaint with the Commission alleging denial of equal treatment with respect to goods and services because of sex.

The Commission's officer contacted the sales manager of the respondent company, who explained that the policy had been instituted because the sales representatives had expressed concern that two home visits had been necessary on occasion, when the wife would not make a purchase without consulting her husband. The officer informed the sales manager of the provisions of the Code as they applied to the situation, and the company agreed to change its policy accordingly.

In settlement of the matter, the company telephoned the complainant, apologized for the inconvenience caused her and offered to make another appointment. The company notified its sales staff of the changes to the policy.

* * * *

EMPLOYMENT

Sex, Sexual Harassment

Allan, Wilson and Riverside Lodge, Chrysalis Restaurant Enterprises Inc., et al

The two female complainants alleged that they had been discriminated against in their employment as waitresses by being subjected to a requirement to wear a uniform that was more burdensome on women than was the dress requirement for male employees. They also alleged that they were refused continued employment because they had objected to the uniform.

The uniform that was the subject matter of the complaints was described by Ms. Allan, one of the complainants, as consisting of very sheer and flimsy material with slits exposing the hips. The complainant testified that she had dealt with the revealing aspects by pinning it at the hips and by wearing leotards or a danskin underneath it.

Ms. Allan further testified that she and other waitresses complained to management about the uniform, but to no avail. She stated that when she wore it, she was subjected to leering and joking and, on one occasion, intimate touching, by male customers.

The Board concluded, on the basis of the evidence of other waitresses who wore the uniform, that Ms. Allan's evidence of customers' reactions was exaggerated.

Ms. Wilson, the other complainant, also testified that she found it embarrassing to wear because she considered it too revealing. She reported to work wearing her own clothes after wearing the uniform for two or three weeks, but received a written warning from management that the uniform was mandatory. Ms. Wilson then resigned her employment. She testified that she felt that she had no choice but to quit in view of management's insistence that she wear the uniform.

Several witnesses gave evidence of having recurrent problems with customers as a result of the dress requirement. Other waitresses testified that they found the uniform unobjectionable and even appealing.

The Board reached the following conclusions on the basis of the evidence before it:

- for a term or condition of employment to be discriminatory on the basis of sex, the male and female employees of the respondent must perform the same or similar work. Males and females were not performing the same or similar work at Riverside Lodge; females were waitresses and males were doormen, busboys or, on occasion, bartenders;

- the uniform requirement was imposed equally on the respondent's male and female employees. Although the uniforms were not identical, the Code does not mandate unisex dress in the workplace;

- the uniform in question was consistent with commonly accepted social norms both within the restaurant/tavern trade and in the wider Ontario community.

With respect to the allegations of constructive dismissal, the Board found that the primary reason for Ms. Allan's layoff was her failure to attend a staff meeting about impending layoffs.

The complaints were dismissed. The Commission is appealing the decision to the Divisional Court of the Supreme Court of Ontario.

Newman, Roach, Petre, Crouse, Landsberg and F.W. Woolworth Ltd.

The five female complainants, all of whom were clerical workers, alleged that they had been denied an annual wage increase because of their sex.

The warehouse employees were predominantly male and the office workers were almost exclusively female. The complaints alleged that wage increases were granted to all employees in 1982, with the exception of the five complainants and one other female employee, who had their wages frozen. The complainants did not feel that they had been given an adequate explanation why their wages had been frozen.

The evidence introduced by the complainants and the Commission alleged that this action was the result of systemic discrimination practised by the company against females as part of an advertent or inadvertent corporate policy.

The respondent then offered evidence to establish the financial and organizational reasoning behind the decision to impose the wage freeze in 1982. The employees had voiced dissatisfaction over the wages and wage structure in the office in 1981. They were concerned about disparities between the office staff who were receiving very different wages and yet were doing very similar work. The company therefore undertook a review and reorganization of the wage structure, in an attempt to create internal parity of wages based, in part, on a comparison with what its competitors were paying for similar jobs.

Management concluded that they were paying lower than average wages in the junior positions and higher than average in the senior positions (positions held by the complainants). Measures were therefore taken to increase the wages of virtually all members of the work force while imposing a freeze on the wages of six female employees because the salaries paid them were considered to be beyond the value of the job performed.

Accordingly, all of the warehouse employees received the 1982 increase, as did 62 of the 68 office employees. The Board found, as a fact, that the conclusions drawn by the respondent were justified on the basis of the data it had received with regard to its competitive position. It was the view of the Board that "no facts established, nor could any reasonable inference be drawn, to suggest that the employer decided to impose a wage freeze on the affected people because of their sex."

The Board observed, however, that the decision to impose a wage freeze on six individuals in a work force of close to 300 is a delicate matter. All six employees affected were long-term, capable and dedicated employees. "From a human standpoint, the way the respondent handled the matter at the time created a well-justified feeling of unfairness and discrimination in the minds of the complainants."

Piazza and Airport Taxi Cab (Malton) Association, Mann

The complainant alleged that she had been dismissed from her employment as a secretary after three months because she had refused the sexual advances of her employer, who was the president of the Association.

The Chairman of the Board of Inquiry observed at the outset of his decision that the evidence had been conflicting, and much turned on an assessment of the credibility of the parties.

The sharp conflict in evidence began with the complainant's terms of employment. She testified that she was under the impression that her position was a permanent one. In contrast, the individual respondent testified that she had been hired as a temporary replacement for the Association's secretary-treasurer. The Board found on the evidence that the complainant had been hired as a secretary, because she did not meet the qualifications and requirements of an officer of the Association as set out in its by-laws.

The complainant testified that the president's verbal and physical advances began a month after she was hired and continued for several weeks with invitations to go out for drinks. She stated that she agreed to accompany him on one such occasion because she expected that this would appease him and that he would stop bothering her. When she told him that she wished to go home, he drove her to a secluded place and forced a kiss on her.

The individual respondent then began asking the complainant to drive him home after work. She testified that she complied with these requests several times, but later refused when the physical advances continued. Shortly after her refusal to accompany him after the working day, he terminated her employment, giving the reason that she had been absent from work the previous day. The complainant testified, however, that she had not been absent, but had left early to make a business delivery at the airport.

In his testimony, Mr. Mann, the individual respondent, denied all of the complainant's allegations respecting sexual harassment. The Board found weaknesses and inaccuracies in his testimony.

The Board stated, however, that the fact that the complainant continued to consent to drive in a car with the respondent, despite his advances, raised the suspicion that these advances were not unwelcome. The Board accepted the complainant's evidence, however, because the respondent did not offer the complainant's consent as a defence, and the Board Chairman did not believe the respondent's outright denial of physical contact with the complainant.

The Board's conclusion was supported by the similar fact evidence of a former female employee of the respondent, who testified that she had been dismissed for refusing the president's sexual advances.

In finding for the complainant and the Commission, the Board Chairman concluded that the complainant had been subjected to an intimidating and hostile working relationship. Considering the close working relationship between the complainant and Mann, it is believable that she was intimidated by him and tried to keep the relationship a business one in the face of his continuing attempts to socialize with her.

The Board further found that sexual harassment was the proximate cause of the complainant's dismissal, contrary to the Code.

Accordingly, the Board made the following order:

- The respondents were jointly and severally liable to pay forthwith to the complainant the following:
  - as special damages for lost wages, the sum of $2,750;
  - as general damages, the sum of $250;

  A total amount of $3,000.
- The respondents shall desist from any sexual harassment of any and all employees who currently are employed by or who may be employed by the respondent Association.
- The respondent Association shall immediately post in their offices a Code card.

Creed, Race, Colour, Ancestry, Place of Origin

Ontario Human Rights Commission, O'Malley (Vincent) and Simpsons-Sears Ltd.

Ms. O'Malley, now Vincent, was employed as a full-time sales clerk by Simpsons-Sears Ltd. It was a condition of employment that full-time sales clerks would work on Friday evenings on a rotating basis, and on two Saturdays out of three. While she was employed by the respondent, Ms. O'Malley became a member of the Seventh-Day Adventist Church. A tenet of this faith is that the Sabbath must be strictly observed; Sabbath extends from sundown Friday to sundown Saturday. As a result, the complainant could no longer, consistent with her new faith, work for her employer on Saturdays. When she informed the respondent's personnel manager of her conversion he informed her that Saturday work was a requirement and she would be discharged if she could not work on Saturdays. She was later offered part-time employment, which she accepted. She worked about one-half the hours formerly required and suffered a consequent reduction in her earnings and fringe benefits. Ms. O'Malley filed a complaint alleging discrimination in employment on the basis of creed contrary to section 4(1)(g) of the Ontario Human Rights Code, R.S.O. 1980, c.340.

Although the Board of Inquiry found that an intention to discriminate is not an essential element of a contravention of section 4(1)(g) of the Code, he dismissed the complaint concluding that the Commission had not satisfied its onus of establishing that Simpsons-Sears had acted unreasonably in the steps that it took to accommodate the complainant after learning that the requirement to work on Saturdays was incompatible with her religious observance.

The Commission's and complainant's appeal to the Divisional Court of the Supreme Court of Ontario was dismissed. Mr. Justice Southey, writing for the majority, held that intent is an essential element of discrimination, and since Simpsons-Sears had no intent to discriminate, there was no contravention of the Code.

The Commission and complainant then appealed to the Court of Appeal. The Court held that there could be no breach of the Code unless the employer intended to discriminate on one of the prohibited grounds. The Court held that there was clearly no such intent, and the appeal was dismissed.

The matter was appealed to the Supreme Court of Canada. In a unanimous judgement, the appeal was allowed with costs.

The Supreme Court of Canada ruled that human rights legislation is of a special nature and it should be given an interpretation that will advance its broad purposes as set out in the preamble to the Code. The approach of the Code is not to punish the discriminator, but rather to provide relief for the victims of discrimination. It is the result or the effect of the action that is significant.

The Court was of the view that the courts below were in error in finding an intent to discriminate to be a necessary element of proof. The proof of intent should not be a governing factor in construing human rights legislation. Since human rights legislation is concerned with consequences of conduct rather than punishment for misbehaviour, it was not necessary to prove that there was an intent to discriminate against the complainant.

In this case the employer's policy required full-time sales staff to work on Saturdays, which was contrary to the complainant's religious beliefs. The Court decided that an employment rule, honestly made for sound economic and business reasons and equally applicable to all to whom it is intended to apply, may, nevertheless, be discriminatory if it affects a person or persons differently from others to whom it may apply. This is adverse effect discrimination, also known as constructive or systemic discrimination. In this kind of situation the employer has a duty to accommodate the complainant short of undue hardship; in other words, to take such steps as may be reasonable to accommodate the employee without undue interference in the operation of the business and without undue expense to the employer.

With respect to the burden of proof, the Court held that the complainant must show a prima facie case of discrimination. Where adverse effect discrimination on the basis of creed is shown and the offending rule is rationally connected to the performance of the job, the employer is not required to justify it but rather to show that he or she has taken such reasonable steps toward accommodation of the employee's position as are possible without undue hardship. The Court was of the view that the Board of Inquiry was in error in assigning to the Commission the burden of proof with respect to accommodation.

The respondent was directed to pay to the complainant as compensation the difference between the sum of her earnings while engaged as a part-time employee of the respondent from October 23, 1978 to July 6, 1979 and the amount she would have earned as a full-time employee during that period.

Randhawa and Lido Industrial Products Ltd., Ondrey

The complainant, a man of East Indian origin, alleged that the layoff of employees of which he was a part was a discriminatory layoff during which the corporate respondent showed a bias in favour of persons of Polish and Eastern European extraction. Mr. Randhawa alleged that he had been discriminated against in his employment on the basis of race, colour, ancestry and place of origin.

In his testimony, the complainant stated that throughout the nine-year period of his employment, he had never been laid off and had received regular increases in salary. He said that he had at no time received any complaints about his work performance. Also, although he had the longest term of employment in the Shipping Department, no other employee in that department was laid off at the time in question.

Evidence introduced by the Commission at the hearing showed that of the eleven senior employees who were laid off, none were Polish, despite the fact that 34 per cent of all plant employees was of Polish origin.

The complainant's former supervisor testified that the complainant had performed his duties to the same level as other workers in the Shipping Department, and that he had requested that the complainant be kept on. However, one of the owners of the corporate respondent told the supervisor that he had laid off employees with the most seniority as a cost-saving measure, because they were the highest paid workers. Moreover, by the end of the year, all but two employees in the Shipping Department had been laid off.

The Board accepted the respondent's evidence that Mr. Randhawa was part of a large layoff in which 60 workers were dismissed. Thirty of those 60 were of Polish extraction, while 34 per cent of the total work force was Polish. Moreover, the percentage of the work force that was non-white did not decrease as a result of the layoff.

Other evidence introduced by the respondent indicated that the company had experienced serious financial difficulties since 1975 and had decided, in 1982, to reduce its labour force significantly in all departments. In 1983 the corporate respondent filed a proposal under the Bankruptcy Act.

The Board concluded that "clearly, economics were a factor, and probably the only factor which led to the dismissal of Mr. Randhawa as well as 60 other employees in May 1982. There is no convincing evidence to lead to the conclusion that any issue including ethnic origin was a factor in this layoff."

The complaint was dismissed.

Scott and Foster Wheeler Ltd.

Mr. Scott, a black Canadian citizen trained as a boilermaker-welder, alleged discrimination in employment on the basis of race, colour and place of origin. In his

complaint, Mr. Scott alleged that in early 1982 he expressed interest in, and was encouraged to apply for, a position as welder with the respondent for a project to repair a boiler in Jamaica, but was ultimately denied this position. In his testimony before the Board of Inquiry, the complainant alleged that he was informed that he would be the first applicant to be sent to the project because of his successful welding test results. However, of the first six names on the applicant list, two were deleted - his and that of a black co-worker. Mr. Scott further testified that he was informed that the company did not want any more black workers because they had experienced considerable difficulties with another black welder on the project.

The Board of Inquiry found that, based on the evidence and on a balance of probabilities, the decision of the project superintendent and, ultimately, of the company not to hire Mr. Scott was influenced by race, colour or place of origin.

The Board addressed an additional issue. Counsel for the respondent had contended that the Board lacked jurisdiction because, if a discriminatory decision had been made, it was made by the company in Jamaica, and the case was therefore outside provincial jurisdiction. This contention was rejected by the Board because the complainant had applied for employment in the province of Ontario to an employer subject to the law of Ontario. The case therefore fell under the jurisdiction of the Code.

The hearing was bifurcated at the request of the respondent, and the remedy was determined at a later date.

Based on the evidence that the complainant was a skilled welder and a competent and hard worker, the Board Chairman rejected testimony from the superintendent that the complainant was not willing to "pitch in" and that he was not capable of hard work.

The Board assessed special damages by way of comparison with the work experience of the four successful candidates on the Jamaica project. Assuming that Mr. Scott would have worked for the same 27 weeks' duration had he not been discriminated against, his entitlement to lost wages, less the amount he earned working elsewhere, totalled $27,806.48. Lost pension plan contributions and health and welfare benefits amounted to $2,579.85.

Mr. Scott testified that the experience of discrimination was "one of the most devastating things that ever happened to me in my life." Recognizing the very serious effect that the discriminatory act had on Mr. Scott, the Board awarded general damages in the amount of $4,500. Interest on these amounts awarded was $15,027.60. The total award was $49,913.93.

The respondent is appealing the decision and order to the Divisional Court of the Supreme Court of Ontario.

Handicap, Age, Record of Offences

White and the Liquor Control Board of Ontario, Tanner

Mr. White began his employment with the Liquor Control Board of Ontario in October 1978. In performing his job as a store clerk, he sustained an injury to his back while unloading heavy cartons of alcohol from a conveyor belt in 1981. Following his recovery from surgery to remove the fractured spinal disc, he was

cleared to return to his job by his family physician with the provision that he should not lift or carry heavy objects. When he attempted to return to work, he was advised by the LCBO that he would not be allowed to resume his position unless he could perform all of the duties.

The complainant then attended the Workers' Compensation Board Hospital and Rehabilitation Centre, where he participated in a program of physiotherapy, exercise and rehabilitation. At the end of his treatment, he was able to lift 50 pounds and carry 20 pounds. However, once again he was not allowed to return to his job unless he could perform all of the duties, which included lifting and carrying heavy cartons for prolonged periods.

Mr. White then filed a complaint alleging discrimination in employment because of handicap.

During the Commission's investigation, the respondent maintained that there were no classifications or positions involving light duty. The employer's policy provided that when an employee returns to a regular position following an injury, he or she is allowed a two-week "rehabilitation" period, during which the job duties would be modified to avoid heavy lifting. However, following this time period, the employee must be declared medically capable of performing all of the duties of the position in question. The respondent further stated that job modification was not considered in the complainant's case because it would have been unfair to the other store clerks, who were required to perform all of the job duties.

When the complaint could not be resolved in conciliation, it was referred to a Board of Inquiry.

Medical testimony before the Board revealed that Mr. White was physically capable of performing the essential duties of his job, except for the heavy repetitive lifting, which appeared to be a minor part of the job.

The Board heard the evidence of other employees with similar handicaps who testified that they had been accommodated with respect to their jobs. It appeared that some employees perform more physical labour while others do more of the office work. There was considerable flexibility in the job assignments allocated by store managers to the clerks. These employees had been accommodated without any disruption or undue hardship to the LCBO's business operations.

Following the conclusion of the Commission's case, the LCBO approached the Commission's counsel with the following proposals of settlement:

1. The LCBO shall return Ronald White to work forthwith to his position of "Clerk III" with the LCBO on the basis that:

   (a) LCBO will not require Mr. White to engage in prolonged heavy lifting or in prolonged frequent turning and bending during the discharge of his tasks as a Clerk III. More particularly:

      (i) Mr. White shall not be required to participate in the unloading process; and

      (ii) Mr. White is capable of servicing the stock, replenishing display racks and taking cases to the showroom area provided that:

(a) when he picks up a case, he is able to confront the case;

(b) he is required to lift cases weighing less than 50 pounds from a height above his shoulders, subject to his medical restrictions;

(c) he is able to transport cases using a buggy; and

(d) he does not perform this type of work continuously and, when he does perform this work, he works at a pace consistent with his disability and medical restrictions;

(b) The LCBO shall restore Mr. White to a Clerk III position with seniority accumulating from December 15, 1981 to the present, in accordance with the provisions of the Collective Agreement between the LCBO and Ontario Liquor Boards Employees' Union dated July 1, 1983 and the LCBO shall restore Mr. White at the rate of wage he would receive under the Collective Agreement had he worked continuously with the LCBO from December 15, 1981 to the present;

(c) The LCBO shall bring up to date from December 15, 1981, all rights and benefits to which Mr. White would be entitled under Article XV of the Collective Agreement as though he had worked continuously as a Clerk III from December 15, 1981 to the present.

(d) Mr. White shall receive vacation credits totalling 19 days for the years 1981 and 1985 and attendance credits totalling 48 3/4 days.

2. The LCBO shall pay Ronald White forthwith the sum of $9,000 as damages to be allocated as follows:

(a) $7,000 as special damages for loss of salary between June 1, 1983 and May 30, 1984 and interest thereon; and

(b) $2,000, as general damages.

3. The LCBO states that it abides by the requirements imposed upon employers by the Human Rights Code, 1981, and, in this regard, the LCBO understands that the Code requires it to afford reasonable accommodation to handicapped applicants and employees, and that the abilities of handicapped applicants and employees to perform any job are to be assessed on an individual basis. The LCBO states that it is presently reviewing its employment practices to ensure that they conform with the requirements of the Code.

The settlement was read into the record by the Board of Inquiry Chairman, who then made a consent order on the basis of the settlement before him. However, since the matter was resolved between the parties before the conclusion of the Board of Inquiry, there was no decision from the Chairman.

Underwood and The Board of Commissioners of Police for the Town of Smiths Falls, Murphy

The complainant alleged that his application for employment as a Police Constable was rejected because he was 40 years old. When conciliation did not result in a settlement, the Commission requested that a Board of Inquiry be appointed.

The investigation disclosed that there were two available positions of Police Constable with the force, for which 60 persons applied.

The Board accepted the Commission's evidence that age was a major factor in the evaluation of applicants. The oldest candidate whose application survived the initial screening was 31. The respondent's only witness admitted that Mr. Underwood's application was superior to that of one of the successful candidates, and, if not superior, at least equal to that of the other. In the view of the Board, the evidence showed as well that during the course of the investigation, the Police Chief and members of the Board had indicated that age was a consideration.

In the Board Chairman's discussion of remedy, he observed that the respondent's reluctance to co-operate with the investigating officer verged on obstructing him in his duties. Moreover, the Police Chief did not bring the employment applications to the hearing as he was directed to do by a summons.

In addition, the Board stated that "the injury the complainant has suffered is made more serious by the discrimination having been practised by a public body, whose judgements are bound to be more publicized, and far more likely to be assumed by the public to be sound, than would those of a private organization."

"Having regard to the nature and extent of the complainant's suffering, to the need to ensure proper respect for the law established by this legislation, particularly on the part of a body that is not only public, but whose function is law enforcement, and to the obstructive tactics employed on behalf of the Board, verging at one point on being in contempt of the Board of Inquiry, I have assessed the general damages to be awarded to the complainant in this case at $3,000. If I had been of the view that no punitive element could or should be a factor in assessing these damages, I would have assessed them in the amount of $2,000."

It was further ordered that, to assure compliance with the Code in respect of its future practices, the Board of Commissioners of Police for the Town of Smiths Falls:

- permit the Ontario Human Rights Commission, through its officers or agents, at some reasonable time or times convenient to both parties, to view the Board's application forms and to review its recruitment procedures to ensure that they are in compliance with the Code;

- to prepare and submit to the Commission for its approval a written policy statement expressing its understanding of the application of the Code to its recruitment procedures and its intention to comply with the requirements of the Code; and

- to provide the Commission with its undertaking to make this policy statement known to its employees and to applicants for employment.

Lancaster and Zeller's Inc. et al

The complainant applied for the position of a loss prevention officer with the company in 1983. The employment application form asked if the applicant had ever been convicted of a criminal offence, had ever been employed by the company and knew any persons who worked for the company. He responded in the negative to these questions, was hired and, for several months, served satisfactorily in the position.

Employees of the respondent later learned that the complainant had been employed by Zeller's 16 years previously, at the age of 22. He was found to have stolen goods valued at less than $50 from the company, and for this reason he had been dismissed. He was charged and convicted of the crime. In 1977 he was granted a pardon by the Governor-General in Council. Between 1977 and 1983, the complainant held several jobs related to security.

When the fact of his earlier dismissal came to light, the respondent dismissed him because he did not answer the questions on the application form truthfully. He continued to withhold information concerning his past employment with Zeller's during the course of the company's investigation and it is company policy not to rehire anyone who has been discharged for theft of company property. Moreover, these actions were considered by the company to be incompatible with a position involving substantial trust, such as the position of loss prevention officer. The complainant then filed a complaint alleging discrimination in employment because of a record of offences.

When a settlement could not be achieved in conciliation, the complaint was referred to a Board of Inquiry.

In addressing the provisions of the Code under which the complaint was filed, the Board of Inquiry was of the view that the law makes it clear that an individual cannot be discriminated against in employment because of a conviction under the Criminal Code for which a pardon has been granted. The Board then stated that "it is equally true that an employer can ask what relationship, if any, the conviction as an act bears upon the employee's ability to perform the job being sought."

The Board accepted the respondent's evidence that the company had been unaware of the fact that charges had been laid and a conviction entered for the theft that resulted in the dismissal of the complainant in 1967. The issue was whether the complainant had been discriminated against in employment because of his record of offences.

The respondent testified that the complainant's dismissal did not flow from the conviction. Rather, it was based on the misrepresentation made by the complainant on his application form. The Board found, on the evidence before it, that the misrepresentation made by the complainant concerning his past employment with the company was a matter central to the kind of job that he was seeking. The Chairman stated, "Indeed, the complainant himself recognized this when he explained the reason for not disclosing the truth. He hoped that he could prove himself on the job."

The Board was of the view that it could not question the employer's substantive decision not to rehire employees whom it had discharged for theft, and found that the corporate decision not to rehire such employees had no connection with a conviction for an offence. The complaint was therefore dismissed. The Commission has sought leave to appeal the decision to the Divisional Court of the Supreme Court of Ontario.

ACCOMMODATION, CONTRACTS, GOODS, SERVICES, FACILITIES

Race, Colour, Age, Sex, Marital Status, Family Status

Reese and London Realty and Rentals Ltd., Davies, Clement

Mrs. Reese, who is black, alleged that she was refused rental accommodation by the respondent because of race and colour.

She testified during the hearing that she had telephoned the respondent rental agent, Mrs. Clement, in response to a newspaper advertisement for rental housing. Mrs. Reese stated that Mrs. Clement told her about two additional rental properties in the same neighbourhood. Upon discussing the features of all three properties, Mrs. Clement believed, according to Mrs. Reese, that the house at 34 Brentwood would be the most suitable for the Reese family.

Mrs. Reese further testified that she drove past the three properties and then telephoned Mrs. Clement to arrange an appointment at 34 Brentwood for the following day, June 8. She stated that she arrived first at the Brentwood house. When the rental agent arrived and met Mrs. Reese, she told her that the tenants had failed to provide her with the key, as they had promised to do, and, therefore, she could not show the house to Mrs. Reese.

The Board found it somewhat difficult to accept the rental agent's claim regarding the key because the evidence indicated that the tenants were motivated to show the house since they had requested an early termination of the lease.

Mrs. Reese then asked the rental agent to show her the other two available properties in the neighbourhood. However, the agent replied that those houses had already been rented.

The respondent rental agent testified that when she was unable to show Mrs. Reese the Brentwood property, she told Mrs. Reese that she would again try to obtain the key from the occupant. However, she claimed that by the time she had again contacted Mrs. Reese, the Brentwood house had been rented.

The Board concluded that the rental agent had acted with unusual haste to rent the Brentwood house after Mrs. Reese showed a clear interest in the property. It was also the Board's opinion that the agent had not wanted to rent the other two properties to Mrs. Reese, who was told they had been rented.

The evidence before the Board indicated that the two properties had not been rented by June 8, the date on which the rental agent met Mrs. Reese. The lease applications had not been completed until June 10 and June 11.

Mrs. Reese further testified that her husband, who is white, had suspicions about the events of June 8. He therefore telephoned the rental agent to inquire about the advertisement and was told that the two properties were still available. He made an appointment, under an assumed name, to view the two properties. Mr. Reese and a white friend, who posed as his wife, met with the rental agent at one of the properties and were assured that it was available.

After these events, Mrs. Reese confronted the rental agent with the fact that her husband and a friend had viewed the house and were told that it was for rent. When Mrs. Reese asked why she was denied the opportunity to apply as a tenant, she was told that the people in that neighbourhood are prejudiced.

At the time of the complaint, Mr. Davies was the President of the respondent company. He had the power to overrule and correct the wrong done by his rental agent, and the Board found that he had grounds to suspect that the agent acted on her prejudice against black people when handling properties in the neighbourhood in question. The Board Chairman cited evidence that while the respondent had rented to blacks in other areas of the city, it had not rented to blacks in Orchard Park where it controlled the rental of at least 20 homes. "Mr. Davies chose rather to endorse without question that authority he had placed in Mrs. Clement to rent as she saw fit," the Board Chairman stated.

Having found that discrimination contrary to the Code had occurred, the Board issued the following order:

- the respondents are jointly and severally liable for discriminating against the complainant, Mrs. Reese, in violation of sections 3(1)(a) and 3(1)(b) of the Ontario Human Rights Code, 1980;

- by way of special damages, the respondent shall pay to Mrs. Reese the amount of $200;

- general damages in the amount of $2,500 shall be paid by the respondents to Mrs. Reese;

- pre-judgement interest, dating from the issuance of this complaint shall be paid to Mrs. Reese on the special and general damages awarded.

Bates and Zurich Insurance Company of Canada

The case before the Board concerned Michael Bates, a 20 year-old single man who alleged that he had had no driving accidents and had never received any demerit points, yet was informed by Zurich Insurance Company that he must pay higher rates than those paid by women, married men of his age and single men who were 25 years of age or older.

The Board examined the legal soundness of the insurance industry's rate classification system, which uses such factors as age, sex and marital status to determine car insurance premium rates.

Counsel for both parties agreed that a prima facie case of discrimination had been established—that is, that the premium rate differentiation was based on factors prohibited under the Code. Thus, the only issue that remained to be argued was whether Zurich's rate classification system fell within the provisions of section 21 of the Code. This section allows insurance companies to differentiate on prohibited grounds if the differentiation is "reasonable and bona fide."

In the decision, the Board of Inquiry looked to the case of the Ontario Human Rights Commission et al and the Borough of Etobicoke, a 1982 decision of the Supreme Court of Canada, which dealt with a limited exception to a general prohibition

against discrimination. In this case, it was established that when interpreting and applying the exceptions contained within the Code, recognition should be given to the Code's basic purpose, which, as stated in the preamble, is to recognize the inherent dignity and rights of each individual. Consistent with this view, the Board stated that "Persons in this province, then, should be dealt with and assessed, as far as possible, on an individual basis, without regard to stereotypical group characteristics." Thus, just as employers are required to demonstrate that limitations that discriminate on the basis of group characteristics are reasonably necessary to the safe, efficient and economic performance of the job, so, too, insurers must show that discriminatory rate classification systems are reasonably necessary to ensure the efficient operation of the insurance system.

With regard to what is "reasonably necessary" for efficiency within the industry, the Board held that there must be a factual basis for the use of the classification system; that is, the discriminatory group factors used must be causally connected to the risk undertaken by automobile insurers.

In its application of this standard, the Board held that although Zurich submitted that unmarried people, males and the general category of persons under 25 are, in fact, a higher risk, there was no scientific evidence of a direct causal relationship between the risk and the rate categories used. "The distinction," the Board Chairman noted, "appears to be based on little more than historical accidents." He emphasized that the insurance industry cannot rely on 30 years of tradition to support a discriminatory rate classification system.

The Board noted the general rule that exceptions to the prohibitions against discrimination in human rights legislation should be narrowly construed. In this case, Zurich had to establish that the essence of its business would be undermined if it could no longer rely on discriminatory group characteristics. The Board found that Zurich did not demonstrate that the abandonment of the present categories would undermine the essence of its business. In fact, it was pointed out by counsel for the Commission that there is an alternative to the system, which is presently in use for those drivers over the age of 25 years. For those drivers, the industry relies solely on factors that are causally connected and non-discriminatory, such as driving record, driving experience and vehicle use, to establish the premium rates charged.

The Board therefore concluded that although the insurance industry has acted in good faith (having developed its present system for business and economic reasons), "the current automobile driver classifications of unmarried male drivers under 25 contravene the Code" and that the present rate classifications are not based on "reasonable and bona fide" grounds.

The respondent has appealed the decision to the Divisional Court of the Supreme Court of Ontario.

London Life Insurance Company and the Ontario Human Rights Commission, Skidmore

Prof. Skidmore alleged that an insurance policy sold to her by London Life was discriminatory on the basis of sex. The insurance company then brought an application in the Supreme Court of Ontario for a declaration that its insurance policy did not contravene the rights of the complainant under the Code.

Prof. Skidmore alleged that she had been hospitalized for a medical problem unrelated to her pregnancy. This medical problem occurred 10 weeks prior to the estimated date of delivery. She was not on a pregnancy leave of absence. Her claim for disability benefits was denied by the insurance company because her illness occurred during a period when she was entitled to be on pregnancy leave. She alleged discrimination on the basis of sex, contrary to the Code.

With respect to whether the Court had jurisdiction to hear the case, it was ruled that there is nothing in the Code prohibiting the Court from adjudicating upon relevant issues of law. However, the Court held that "a decision of the Court does not interfere with the jurisdiction of the Commission or in any way preclude the Commission from investigating the complaint."

The Court then addressed the merits of the case and found the provisions of the policy under which Prof. Skidmore was denied disability benefits to be invalid. This is because the policy denied benefits to an employee during the period when the employee could elect to be on leave of absence, but is not, in fact, on leave of absence.

The Court ruled in the favour of the Commission and the complainant.

The application was therefore dismissed, and costs were awarded against London Life.

This decision will have a far reaching effect on women who are denied disability benefits during their pregnancies. If an employer offers sick leave coverage to employees, such coverage must be extended to a pregnant woman, except while she is on pregnancy leave.

The Municipality of Metropolitan Toronto et al and the Ontario Human Rights Commission and Medcalf, Somwaru

Mr. Medcalf and Ms. Somwaru had alleged that they had been denied the right to equal treatment without discrimination with respect to the receipt of social assistance benefits, in contravention of section 1 of the Code.

The Municipality had requested the Commission to refuse to deal with these complaints pursuant to section 33(1)(c) of the Code because the complaints were not within the jurisdiction of the Commission on the following grounds:

- welfare administration is not a "service" as defined in section 1 of the Code;

- the General Welfare Assistance Act empowers the welfare administrator to determine eligibility and the amount of assistance and the welfare administrator is therefore not subject to the Code;

- the findings of the Commission could be contrary to those of the Social Assistance Review Board or Court on appeal, and therefore would undermine the intent of the General Welfare Assistance Act;

- it is beyond the jurisdiction of the Commission to deal with the decision of the Social Assistance Review Board, a statutory tribunal.

The Commission assumed jurisdiction in the matter and notified the Municipality of its intention to proceed with the investigation of the complaints.

The Municipality applied for judicial review of the Commission's decision, and the application was dismissed by the Divisional Court of the Supreme Court of Ontario for the following reasons:

> "In our opinion, the type of welfare assistance under consideration here falls squarely within the phrase, 'with respect to services, goods and facilities' in section 1 of the Human Rights Code, 1981, and the complaint is therefore within the jurisdiction of the respondent Commission. Further, we find no error in this exercise of the Commission's discretion under section 33 of the Code. Indeed, in our view, the complaint is of the type contemplated by the legislation to be entertained by the Commission."

Prof. Skidmore alleged that she had been hospitalized for a medical problem unrelated to her pregnancy. This medical problem occurred 10 weeks prior to the estimated date of delivery. She was not on a pregnancy leave of absence. Her claim for disability benefits was denied by the insurance company because her illness occurred during a period when she was entitled to be on pregnancy leave. She alleged discrimination on the basis of sex, contrary to the Code.

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TABLE 1 - Complaints Received by Region of Intake and Ground: 1985/86

Region: / Ground:	Race/Colour	Ethnic Origin	Creed	Sex	Sexual Harassment	Age	Marital Status	Family Status	Handicap	Others *	Total	% of Total Complaints
Eastern	16 (11)	5 (3)	4 (3)	33 (23)	14 (10)	8 (6)	5 (3)	2 (1)	54 (37)	4 (3)	**145** (100)	(11)
Hamilton/Niagara	15 (8)	3 (1)	5 (3)	23 (12)	14 (7)	20 (10)	9 (5)	7 (4)	84 (44)	12 (6)	**192** (100)	(14)
Northern	19 (12)	3 (2)	1 (1)	24 (16)	19 (12)	12 (8)	9 (6)	5 (3)	54 (35)	8 (5)	**154** (100)	(11)
Southwestern	35 (18)	8 (4)	3 (1)	35 (18)	24 (12)	27 (14)	5 (2)	11 (5)	46 (23)	7 (3)	**201** (100)	(15)
Toronto Central	59 (20)	18 (6)	13 (4)	47 (16)	21 (7)	37 (13)	10 (4)	5 (2)	73 (25)	9 (3)	**293** (100)	(22)
Toronto East	41 (21)	2 (1)	8 (5)	33 (17)	18 (9)	16 (8)	2 (1)	2 (1)	62 (32)	8 (5)	**191** (100)	(14)
Toronto West	45 (25)	9 (5)	6 (3)	13 (7)	11 (6)	20 (11)	10 (6)	2 (2)	58 (32)	6 (3)	**180** (100)	(13)
Total	230 (17)	48 (4)	40 (3)	208 (15)	121 (9)	140 (10)	50 (4)	34 (2)	431 (32)	54 (4)	**1356** (100)	(100)

TABLE 2 - (Employment) Complaints Received by Region of Intake and Ground: 1985/86

Eastern	12 (11)	2 (2)	3 (2)	29 (27)	14 (13)	6 (6)	1 (-)	2 (2)	40 (37)	-	**109** (100)	(10)
Hamilton/Niagara	13 (9)	2 (2)	5 (3)	22 (15)	14 (9)	20 (13)	1 (-)	4 (3)	70 (46)	-	**151** (100)	(14)
Northern	9 (7)	2 (2)	1 (1)	17 (15)	19 (16)	12 (10)	6 (3)	1 (1)	53 (45)	-	**120** (100)	(11)
Southwestern	24 (17)	5 (3)	2 (1)	28 (19)	24 (17)	21 (14)	2 (1)	1 (1)	37 (26)	2 (1)	**146** (100)	(14)
Toronto **	123 (22)	20 (4)	17 (3)	84 (15)	51 (9)	65 (12)	12 (2)	6 (1)	171 (31)	4 (1)	**553** (100)	(51)
Total	181 (17)	31 (3)	28 (3)	180 (17)	122 (11)	124 (11)	22 (2)	14 (1)	371 (34)	6 (1)	**1079** (100)	(100)

* Public Assistance, Record of Offences, Reprisal and Breach of Settlement, and No ground (Sec.33).

** Total for the three Metro Toronto Regions.

TABLE 3 – Complaints Received by Region of Intake and Ground: 1984/85

Region: / Ground:	Race/Colour	Ethnic Origin	Creed	Sex	Sexual Harassment	Age	Marital Status	Family Status	Handicap	Others *	Total	% of Total Complaints
Eastern	17 (13)	2 (2)	2 (2)	32 (25)	6 (5)	15 (12)	4 (3)	3 (2)	42 (33)	4 (3)	127 (100)	(8)
Northern	14 (9)	3 (2)	4 (3)	33 (21)	14 (9)	14 (9)	10 (6)	4 (3)	56 (36)	3 (2)	155 (100)	(10)
Southwestern	78 (19)	11 (3)	12 (3)	64 (16)	43 (11)	43 (11)	20 (5)	11 (3)	95 (23)	21 (6)	398 (100)	(25)
Toronto Central	77 (24)	17 (5)	21 (7)	41 (13)	15 (5)	30 (10)	13 (4)	7 (2)	89 (28)	5 (2)	315 (100)	(20)
Toronto East	66 (19)	19 (6)	11 (3)	53 (15)	27 (8)	31 (9)	20 (6)	8 (2)	92 (27)	14 (5)	341 (100)	(21)
Toronto West	76 (29)	5 (2)	16 (6)	34 (13)	25 (10)	19 (7)	11 (4)	6 (2)	64 (24)	7 (3)	263 (100)	(16)
Total	328 (21)	57 (4)	66 (4)	257 (16)	130 (8)	152 (10)	78 (5)	39 (2)	438 (27)	54 (3)	1599 (100)	(100)

TABLE 4 – (Employment) Complaints Received by Region of Intake and Ground: 1984/85

Eastern	8 (9)	1 (1)	1 (1)	28 (32)	6 (7)	14 (16)	3 (3)	—	27 (31)	—	88 (100)	(7)
Northern	5 (4)	2 (2)	4 (3)	29 (24)	10 (8)	12 (10)	7 (6)	1 (1)	51 (42)	—	121 (100)	(10)
Southwestern	58 (18)	6 (2)	10 (3)	55 (17)	42 (13)	34 (10)	17 (5)	6 (2)	99 (30)	—	327 (100)	(26)
Toronto **	178 (25)	31 (4)	42 (6)	110 (15)	67 (9)	65 (9)	21 (3)	11 (2)	191 (27)	3 (-)	719 (100)	(57)
Total	249 (20)	40 (3)	57 (5)	222 (18)	125 (10)	125 (10)	48 (4)	18 (1)	368 (29)	3 (-)	1255 (100)	(100)

* Public Assistance, Record of Offences, Reprisal and Breach of Settlement.

** Total for the three Metro Toronto regions.

TABLES ON CASES RECEIVED

Tables 1 to 9 provide information on the number and type of complaints received, indicating the nature of Code usage by the protected groups across the province.

TABLES 1 and 3 - Complaints received by Region of Intake and Ground: 1985/86 (1984/85)

These tables provide a breakdown of complaints received according to geographical regions. The Commission is divided into seven regions for administrative purposes, as indicated on the map on page 34.

In 1985/86, Toronto Central, the region situated in downtown Toronto, received 293 complaints, or 22 per cent of the total complaints registered, followed by the Southwestern region with 201 or 15 per cent, Hamilton/Niagara and Toronto East with 192 and 191 or 14 per cent each, Toronto West with 180 or 13 per cent, Northern with 154 or 11.3 per cent and Eastern with 145 or 10.7 per cent.

In 1985/86 the cases received by the four regions outside Metro Toronto represented 51 per cent of the total while those received by the Metro Toronto regions represented 49 per cent. These percentages reflect a significant change from 1984/85, when the Toronto regions received 57 per cent of the total cases compared to 43 per cent received by the other regions.

This shift results from a 28 per cent decrease in the number of complaints filed in Metro Toronto, where 664 complaints were received in 1985/86 as compared with 919 in 1984/85. At the same time, there was a slight increase in the complaints registered in the regions outside Metro Toronto where 692 complaints were received in 1985/86 compared with 680 in 1984/85.

Handicap was the ground most frequently cited in complaints and this occurred in every region across the province. Handicap was followed by race in the Toronto regions and by sex in the other regions. Age and sexual harassment were the next most cited grounds and were used somewhat comparably in all regions.

TABLES 2 and 4 - (Employment) Complaints received by Region of Intake and Ground: 1985/86 (1984/85)

These tables show the number of complaints received in the area of employment only, after complaints in the areas of services, housing, contracts, vocational associations, reprisal and breach of settlement were deducted from Table 1.

In 1985/86 the Toronto regions received 51 per cent of the total employment complaints, in contrast with only 49 per cent of the total complaints in all social areas, as shown in Table 1. This means that the regions outside Toronto received more complaints in the areas of services, housing and contracts than the Toronto regions. In fact, when Table 2 is subtracted from Table 1, it is shown that they registered 166 or 60 per cent of the total 277 complaints in the non-employment areas, compared with 111 or 40 per cent registered in Toronto.

TABLE 5 - Complaints Received by Ground and Provision, 1985/86

Ground: / Code Provisions:	Race/Colour	Ethnic Origin	Creed	Sex	Sexual Harassment	Age	Marital Status	Family Status	Handicap	Public Assistance (Only in Accommodation)	Record of Offences (Only in Employment)	Reprisal/Breach of Settlement	No Ground (Sec. 33)	Total	Percentage
Services	20	15	8	21	-	2	10	2	49	1	-	-	8	136	10
Accommodation	25	2	3	2	-	9	18	18	10	20	-	-	-	107	8
Contracts	4	-	1	1	-	3	-	-	1	-	-	-	-	10	1
Employment	181	31	28	182	121	124	22	14	371	-	3	-	3	1,080	80
Vocational Associations	-	-	-	1	-	2	-	-	-	-	-	-	-	3	-
Reprisal	-	-	-	1	-	-	-	-	-	-	-	17	-	18	1
Breach of Settlement	-	-	-	-	-	-	-	-	-	-	-	2	-	2	-
Total	**230**	**48**	**40**	**208**	**121**	**140**	**50**	**34**	**431**	**21**	**3**	**19**	**11**	**1,356**	**100**
Percentage	17	4	3	15	9	10	4	2	32	2	-	1	1	100	
Extension of Code Provisions Also Cited in Complaints:															
Constructive Discrimination	1	1	1	10	-	-	-	-	3	-	-	-	-	16	26
Association Discrimination	9	-	1	1	-	1	4	-	5	1	-	-	-	22	36
Announced Discrimination	-	-	-	1	-	-	-	-	-	-	-	-	-	1	2
Advertising	-	-	-	1	-	1	-	-	-	-	-	-	-	2	3
Application Forms	1	-	-	4	-	5	2	1	4	-	-	-	-	17	28
Employment Agencies	-	-	-	1	-	-	-	-	2	-	-	-	-	3	5
Employment Plans	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total	11	1	2	18	-	7	6	1	14	1	-	-	-	61	100

TABLE 6 - Complaints Received by Ground and Provision, 1984/85

Code Provisions: / Ground:	Race/Colour	Ethnic Origin	Creed	Sex	Sexual Harassment	Age	Marital Status	Family Status	Handicap	Public Assistance (Only in Accommodation)	Record of Offences (Only in Employment)	Reprisal/Breach of Settlement	Total	Percentage
Services	35	10	7	23	-	10	8	1	50			-	144	9
Accommodation	36	7	1	7	5	17	22	19	15	34		-	163	10
Contracts	4	-	1	2	-	-	-	1	2			-	10	1
Employment	249	40	57	222	125	125	48	18	368		3	-	1,255	78
Vocational Associations	4	-	-	3	-	-	-	-	3			-	10	1
Reprisal	-	-	-	-	-	-	-	-	-			16	16	1
Breach of Settlement	-	-	-	-	-	-	-	-	-			1	1	-
Total	**328**	**57**	**66**	**257**	**130**	**152**	**78**	**39**	**438**	**34**	**3**	**17**	**1,599**	**100**
Percentage	21	4	4	16	8	10	5	2	27	2	-	1	100	
Extension of Code Provisions Also Cited in Complaints:														
Constructive Discrimination	5	5	15	28	-	5	-	2	9	1	-	-	70	43
Association Discrimination	11	1	-	4	1	1	2	4	4	1	-	1	30	18
Announced Discrimination	-	-	-	-	-	-	-	-	1	1	-	-	2	1
Advertising	-	3	2	6	-	2	1	1	2	-	-	-	17	10
Application Forms	-	-	2	7	-	14	15	-	5	-	-	-	43	26
Employment Agencies	1	1	-	2	-	-	-	-	-	-	-	-	4	2
Employment Plans	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total	**17**	**10**	**19**	**47**	**1**	**22**	**18**	**7**	**21**	**3**	**-**	**1**	**166**	**100**

TABLES 5 and 6 - Complaints Received by Ground and Provision, 1985/86 (1984/85)

A total of 1,356 complaints were received in 1985/86, a decrease of 15 per cent from the total 1,599 registered in 1984/85. As seen in Table 1, this decrease was registered in the Toronto regions only, not in the other geographic areas of the province.

The decrease results mainly from a lower number of complaints on the grounds of race and sex but is compounded by smaller decreases in other grounds.

Complaints on the ground of handicap constituted the largest number of cases or 32 per cent of the total complaints received in 1985/86.

Complaints on the ground of race constituted the next largest percentage, with 17 per cent of the 1985/86 total, followed by sex (15%), age (10%) and sexual harassment (9%).

Employment-related complaints represented the bulk of the caseload, reaching 80 per cent of the 1985/86 total, an increase of 2 per cent over 1984/85. Complaints in the areas of services and accommodation constituted 10 and 8 per cent of the total respectively, with the remaining 2 per cent divided among the other social areas.

TABLE 7 – Complaints Received by Type of Handicap and Provision, 1985/86 (1984/85)

Handicap: / Provision:	1985/86							1984/85						
	Services	Accommodation	Contracts	Employment	Vocational Associations	Total	Percentage	Services	Accommodation	Contracts	Employment	Vocational Associations	Total	Percentage
Sensory (vision/hearing/speech/etc. impairments)	12	1	-	32	-	**45**	10	10	3	-	41	1	**55**	13
Respiratory (asthma/lung diseases/etc.)	-	-	-	15	-	**15**	3	-	-	-	10	-	**10**	2
Limbs and Digits (amputation/impairment of limb/digit/etc.)	3	1	-	57	-	**61**	15	-	3	-	47	-	**50**	11
Cardiovascular (heart disease/hypertension/stroke/etc.)	2	1	-	10	-	**13**	3	-	1	-	18	-	**19**	4
Neuromuscular (dystrophy/sclerosis/cerebral palsy/quadriplegia/etc.)	14	2	-	10	-	**26**	6	7	3	1	11	-	**22**	5
Neurological (epilepsy/seizures/brain injury/etc.)	5	1	-	18	-	**24**	6	5	-	-	28	1	**34**	8
General Diseases or Disorders (back injuries/allergies/cancer/diabetes/hernia/etc.)	7	2	1	140	-	**150**	35	12	-	-	124	-	**136**	31
Miscellaneous (multiple handicaps/obesity/etc.)	2	-	-	31	-	**33**	8	2	-	-	57	1	**60**	14
Learning Disability (dyslexia/etc.)	1	-	-	-	-	**1**	-	-	-	-	2	-	**2**	1
Mental Retardation (or mental impairment)	1	-	-	1	-	**2**	-	8	3	1	3	-	**15**	3
Mental Disorder (pyschiatric illness/ personality disorders/addictions/etc.)	2	2	-	36	-	**40**	9	6	2	-	27	-	**35**	8
Record of claim under the Worker's Compensation Act	-	-	-	21	-	**21**	5	-	-	-	-	-	-	-
Total	**49**	**10**	**1**	**371**	-	**431**	100	**50**	**15**	**2**	**368**	**3**	**438**	100
Percentage	12	2	-	86	-	100		11	3	1	84	1	100	

TABLE 7 - Complaints Received by Type of Handicap and Provision, 1985/86 (1984/85)

Physical or mental handicap was cited in 431 complaints, constituting 32 per cent of the total complaints received in 1985/86, by far the most frequently alleged ground of discrimination.

There was practically no change in the number of cases received in 1985/86 compared to those received in 1984/85.

In 1985/86, the number of complaints related to general diseases or disorders continued to increase, to reach 35 per cent of the total number of cases, followed by cases related to impairment of limbs and digits which represented 15 per cent, and sensory impairments which represented 10 per cent.

Workers experiencing injuries or disabilities for which benefits were claimed or received under the Workers' Compensation Act are now guaranteed the right to equal treatment under the Code and 21 complainants made use of this new provision during 1985/86.

TABLE 8 - Complaints Received by Sex of Complainant and Ground

Males			Females	
1984/85	1985/86		1985/86	1984/85
221	146	Race/Colour	83	102
32	33	Ethnic Origin	14	25
47	25	Creed	15	18
50	56	Sex	148	200
5	4	Sexual Harassment	116	125
82	93	Age	45	69
24	20	Marital Status	27	51
10	9	Family Status	25	29
269	255	Handicap	175	164
9	6	Public Assistance	15	25
3	3	Record of Offences	-	-
7	14	Reprisal	3	9
-	2	Breach of Settlement	-	1
-	7	No Grounds	4	-
759	673	Totals *	670	818
48%	50%		50%	52%

* The difference between the totals on this table and on Tables 1 and 5 represents the complaints initiated by the Commission this year.

TABLE 8

In 1985/86, consistent with the trend observed in previous years, females outnumbered males in alleging discrimination because of sex, sexual harassment, marital and family status, while males outnumbered females in filing complaints in the other protected grounds such as race, ethnic origin, creed, age and handicap.

The ground of "sex" includes complaints dealing with discrimination because of pregnancy which totalled 30 in 1985/86.

TABLE 9 - Commission-Initiated Complaints by Ground, 1985/86 (1984/85)

	1985/86	1984/85
Race/Colour	1	6
Ethnic Origin	1	-
Creed	-	1
Sex	4	7
Sexual Harassment	1	-
Age	2	1
Marital Status	3	2
Handicap	1	5
Total	13	22

TABLE 9

Where the Commission is made aware of apparent violations of the Code not necessarily related to individual victims, the Code provides for the initiation of complaints under which the situation can be fully investigated.

The following examples illustrate the types of complaints initiated by the Commission in 1985/86.

- Allegations against an employer suspected of denying promotion to employees of Philippine ancestry. Indication of these practices was revealed during the investigation of a separate, individual complaint.

- Allegations that a personnel agency screens out job applicants who speak with a "foreign" accent and generally discriminates against racial minority applicants.

- Complaint against an employer whose application form includes questions that are in violation of the Code.

- Allegations against an employer's practice of recruiting externally for Management Trainees, which leads to almost exclusive hiring of males, instead of relying on promotion from within, which would open promotional opportunities to a greater number of females who constitute the bulk of the workforce.

- Allegations against an insurance company that denies medical coverage to common-law spouses who have lived together less than 24 months. This standard was not applied adversely to legally married spouses.

- Allegations against an employer and union that are parties to a collective agreement which denies female employees sickness benefits for pregnancy-related illnesses.

- Allegations against a shoe store that uses females as cashiers and males as salesclerks exclusively.

TABLE 10 – Complaints Closed by Disposition and Ground, 1985/86

Disposition: / Ground:	Race/Colour	Ethnic Origin	Creed	Sex	Sexual Harassment	Age	Marital Status	Family Status	Handicap	Public Assistance	Record of Offences	Reprisal	Breach of Settlement	No Grounds (Sec. 33)	Total
Settled	128 55%	18 43%	20 57%	139 73%	77 74%	62 53%	34 83%	23 85%	197 65%	14 93%	3 75%	9 56%	-	-	**724** 64%
Dismissed	65 28%	20 48%	13 37%	19 10%	14 13%	34 29%	-	-	47 16%	1 7%	-	3 19%	1 100%	3 100%	**220** 20%
Withdrawn	38 17%	4 9%	2 6%	32 17%	13 13%	22 18%	7 17%	4 15%	58 19%	-	1 25%	4 25%	-	-	**185** 16%
Total	**231**	**42**	**35**	**190**	**104**	**118**	**41**	**27**	**302**	**15**	**4**	**16**	**1**	**3**	**1,129**

TABLE 11 - Complaints Closed by Disposition and Ground, 1984/85

Disposition: / Ground:	Race/Colour	Ethnic Origin	Creed	Sex	Sexual Harassment	Age	Marital Status	Family Status	Handicap	Public Assistance	Record of Offences	Reprisal	Breach of Settlement	Total
Settled	137	30	21	149	77	78	40	29	193	22	2	10	-	**788**
	64%	60%	62%	84%	81%	74%	85%	82%	70%	100%	100%	83%	-	74%
Dismissed	50	8	9	13	8	20	3	3	37	-	-	2	1	**154**
	23%	16%	26%	7%	8%	19%	7%	9%	14%	-	-	17%	100%	14%
Withdrawn	27	12	4	16	10	8	4	3	44	-	-	-	-	**128**
	13%	24%	12%	9%	11%	7%	18%	9%	16%	-	-	-	-	12%
Total	**214**	**50**	**34**	**178**	**95**	**106**	**47**	**35**	**274**	**22**	**2**	**12**	**1**	**1,070**

TABLES ON COMPLAINTS CLOSED

Tables 10 to 19 provide information on the numbers and types of case dispositions and settlements.

TABLES 10 and 11 - Complaints Closed by Disposition and Ground,1985/86 (1984/85)

Complaints closed during 1985/86 totalled 1,129, representing an increase of six per cent over the number of 1,070 closed in 1984/85.

The Commission may close a case under the following circumstances.

Withdrawal - by accepting a complainant's instructions to stop proceedings on the matter.

Settlement - by ratifying agreements arrived at by the parties following investigation or reconsideration of a complaint or by means of decisions and awards by Boards of Inquiry or the Courts.

Dismissal - by deciding not to deal with a complaint, in accordance with section 33 of the Code; by determining that the evidence does not warrant an inquiry, in accordance with section 35 of the Code; by upholding its original decision, after the complainant requested reconsideration of the dismissal and the entire matter was reviewed in accordance with section 36; or by means of decisions by Boards of Inquiry or the Courts.

Sixty-four per cent of the cases closed in 1985/86 were settled, while 20 per cent were dismissed and 16 per cent were withdrawn. This represents a change from the equivalent rates in 1984/85 which were, respectively, 74, 14 and 12 per cent. The 64 per cent rate of settlements in 1985/86 represents a decrease of 10 per cent over the rate of 74 per cent in 1984/85 and this decrease was experienced similarly in almost all grounds.

The rate of settlement varies according to grounds. In 1985/86, the highest rates of settlement were registered in cases citing the grounds of public assistance, family status, marital status, record of offences, sexual harassment and sex, while the lowest were observed in complaints related to ethnic origin, age, race and colour, reprisal and creed.

Reconsiderations

In accordance with Section 36 of the Code, when the Commission dismisses a case, the parties are given reasons in writing for the Commission's decision and invited to submit any new evidence or arguments which might affect the Commission's original decision. During 1985/86 57 requests for reconsideration were received, compared with 65 during 1984/85. Forty-nine such requests were completed in 1985/86, compared with 51 in 1984/85.

Decisions not to deal with complaints

In 1985/86,sixty-one requests under section 33 of the Code were submitted by the Commission, requesting that the complaints not be dealt with because: they should be more appropriately handled under another Act; they were trivial, frivolous or made in bad faith; they were outside of the Commission's jurisdiction; or they were based on facts which had occurred more than six months before the complaint was filed.

Of these 61 requests, 35 were accepted (and the case discontinued) and 26 rejected (and the case continued). This represents an increase of 133 per cent over the 15 requests accepted in 1984/85 and a decrease of 41 per cent over the 44 rejected in 1984/85.

Caseload in Process

The number of cases brought forward from 1984/85 was 1,507. During 1985/86, 1,356 new cases were received and 1,129 were closed, bringing the caseload in process at the end of the fiscal year to 1,734.

TABLE 12 - Settlements Effected by Ground, 1985/86

Ground:	Settlement: Specific and General Damages	Number of Complainants Who Received Damages	Offer of Job or Facility	Offer of or Consideration for Next Job or Facility	Affirmative Action Implemented	Seminars With Respondent Staff	Review of Practices, Policies or Documents	Issuance or Correction of References	Letter of Apology to Complainant	Written Declaration of Management Policies
Race/Colour	$164,936	41	23	11	7	9	37	12	20	56
Ethnic Origin	2,200	3	4	3	-	1	3	-	7	7
Creed	12,085	5	5	-	-	2	7	3	4	4
Sex	132,295	63	32	16	1	15	44	19	13	42
Sexual Harassment	105,245	59	3	2	1	5	26	12	20	48
Age	144,325	23	15	6	-	2	20	7	5	27
Marital Status	6,971	5	6	2	-	-	15	1	-	11
Family Status	4,814	6	7	4	-	-	5	2	3	11
Handicap	457,996	88	57	24	-	6	33	23	21	49
Receipt of Public Assistance	414	2	3	5	-	-	2	-	3	4
Record of Offences	-	-	-	1	-	-	-	1	-	1
Reprisal	19,000	4	1	-	-	1	1	4	1	2
Total	$1,050,281	299	156	74	9	41	193	84	97	262

TABLE 13 - Settlements Effected by Ground, 1984/85

Ground:	Settlement: Specific and General Damages	Number of Complainants Who Received Damages	Offer of Job or Facility	Offer of or Consideration for Next Job or Facility	Affirmative Action Implemented	Seminars With Respondent Staff	Review of Practices, Policies or Documents	Issuance or Correction of References	Letter of Apology to Complainant	Written Declaration of Management Policies
Race/Colour	$105,727	46	42	20	1	9	26	24	24	49
Ethnic Origin	14,109	12	6	7	-	2	7	-	1	9
Creed	18,594	7	5	-	-	1	7	3	3	7
Sex	127,052	68	29	19	4	13	54	17	20	75
Sexual Harassment	100,627	52	8	3	1	4	9	22	19	37
Age	34,824	16	24	18	1	9	20	4	4	31
Marital Status	4,144	5	10	8	-	1	10	1	1	7
Family Status	5,750	8	5	9	-	2	7	4	3	13
Handicap	99,174	53	60	33	-	5	30	23	22	61
Receipt of Public Assistance	500	1	8	7	-	-	5	-	1	8
Record of Offences	140	1	-	1	-	-	-	-	-	1
Reprisal	82,447	3	1	-	-	-	-	2	1	1
Total	$593,088	272	198	125	7	46	175	100	99	299

TABLES 12 and 13 - Settlements effected by Ground, 1985/86 (1984/85)

Case settlements under the Code aim at restoring the complainant to the position he/she would have been in but for the discrimination in question.

At the same time, where appropriate, settlements incorporate measures to prevent the re-occurrence of discrimination or to accelerate the process towards balanced representation of protected groups. Among examples of such settlements are review of the respondent's practices and policies (193 in 1985/96, a slight increase from the previous year), human rights seminars with the respondent's employees (41 in 1985/86, or slightly fewer than in 1984/85) and implementation of affirmative action programs (9 such programs in 1985/86, an increase of 2 over 1984/85).

Monetary compensation received by complainants in 1985/86 reached $1,050,281, representing a 77 per cent increase over the $593,088 received by complainants in 1984/85, and the highest amount of cash settlements registered in the Commission's history.

Complaints on the ground of handicap registered the highest amount of compensation of all grounds. A total of $457,996 was received by 88 complainants, representing 29 per cent of all complaints based on handicap closed during the year. Furthermore, 57 complainants alleging discrimination because of handicap were also placed or re-instated into jobs of their choice, and 24 others were offered the next available or consideration for the next available job. These figures reflect the pervasiveness of discrimination facing persons with handicaps.

Complainants alleging discrimination because of race and colour received the next highest amount of compensation, at $164,936, followed by complainants alleging age discrimination, at $144,325, and complainants alleging discrimination because of sex, at $132,295.

Table 18 shows the consistent growth in cash settlements effected by the Commission over the eight-year period 1978/79 to 1985/86.

Table 14 - Complaints Closed by Disposition, Ground and Provision, 1985/86

Disposition:	Race/Colour	Ethnic Origin	Creed	Sex	Sexual Harassment	Age	Marital Status	Family Status	Handicap	Public Assistance	Record of Offences	Reprisal/Breach of Settlement	Total	Percentage
Ground:														
EMPLOYMENT														
Settled	94	10	13	119	77	55	22	8	175	-	3	-	576	64
Dismissed	49	15	8	15	14	26	-	-	33	-	-	-	160	18
Withdrawn	33	3	2	31	13	20	4	2	50	-	1	-	159	18
Sub-Total	176	28	23	165	104	101	26	10	258	-	4	-	895	100
ACCOMMODATION														
Settled	19	3	2	2	-	5	9	12	4	13	-	-	69	79
Dismissed	4	-	1	-	-	3	-	-	1	1	-	-	10	12
Withdrawn	2	-	-	-	-	2	-	2	2	-	-	-	8	9
Sub-Total	25	3	3	2	-	10	9	14	7	14	-	-	87	100
SERVICES														
Settled	15	5	5	15	-	2	3	3	18	1	-	-	67	54
Dismissed	11	5	3	4	-	4	-	-	13	-	-	-	40	36
Withdrawn	2	1	-	1	-	-	3	-	5	-	-	-	12	10
Sub-Total	28	11	8	20	-	6	6	3	36	1	-	-	119	100
CONTRACTS/VOCATIONAL ASSOCIATIONS/REPRISAL/BREACH OF SETTLEMENT														
Settled	-	-	-	3	-	-	-	-	-	-	-	9	12	52
Dismissed	1	-	1	-	-	1	-	-	-	-	-	7	10	24
Withdrawn	1	-	-	-	-	-	-	-	1	-	-	4	6	24
Sub-Total	2	-	1	3	-	1	-	-	1	-	-	20	28	100

TABLE 14 - Complaints Closed by Disposition, Ground and Provision, 1985/86

This table correlates the disposition of complaints to the social area and ground cited. The Code provisions, or sections in Part I, related to the social areas covered by the legislation such as employment, accommodation, services, etc.

Correlations by disposition and area show that cases in the area of accommodation (cases dealing with all aspects of purchase or rental of private and commercial units) continued to have the highest rate of settlements, at 79 per cent. This was followed by cases in the area of employment at 64 per cent, cases in the area of services at 54 per cent and cases in all the other social areas combined, at 52 per cent.

Cases dealing with the provision of services, goods and facilities such as those available in restaurants, stores, schools, hospitals, government departments, etc. registered the highest rate of dismissals, at 36 per cent, followed by contracts/vocational associations/reprisal and breach of settlement combined, at 24 per cent, employment at 18 per cent and accommodation at 12 per cent.

Correlations by disposition and ground by each area show trends similar to those discussed under Tables 10 and 11, combining all social areas.

TABLE 15 - Complaints Closed by Disposition, Sex of Complainant and Ground, 1985/86

Males					Females			
Withdrawn Nos. %	Dismissed Nos. %	Settled Nos. %	Total Nos.		Total Nos.	Settled Nos. %	Dismissed Nos. %	Withdrawn Nos. %
19 (13)	53 (36)	74 (51)	146	Race	84	49 (58)	16 (19)	19 (23)
3 (12)	11 (44)	11 (44)	25	Ethnic Origin	17	7 (41)	9 (53)	1 (6)
1 (4)	11 (48)	11 (48)	23	Creed	12	9 (75)	2 (17)	1 (8)
6 (18)	8 (24)	19 (58)	33	Sex	153	117 (77)	11 (7)	25 (16)
1 (33)	- -	2 (67)	3	Sexual Harassment	101	75 (74)	14 (14)	12 (12)
12 (18)	24 (36)	30 (46)	66	Age	52	32 (62)	10 (19)	10 (19)
3 (21)	- -	11 (79)	14	Marital Status	24	20 (83)	- -	4 (17)
2 (20)	- -	8 (80)	10	Family Status	17	15 (88)	- -	2 (12)
35 (19)	35 (19)	111 (62)	181	Handicap	119	84 (70)	12 (10)	23 (20)
- -	1 (20)	4 (80)	5	Public Assistance	10	10 (100)	- -	- -
1 (25)	- -	3 (75)	4	Record of Offences	-	- -	- -	- -
1 (10)	4 (40)	5 (50)	10	Other*	10	4 (40)	3 (30)	3 (30)
84 -	**147 -**	**289 -**	**520**	**Total ****	**599**	**422 -**	**77 -**	**100 -**
16% -	28% -	56% -	100%	Percentage	100%	70% -	13% -	17% -

* Reprisal/Breach of Settlement/No Ground (Section 33).
** The difference between the totals on this table and on Table 9 represents the Commission-initiated complaints closed this year.

TABLE 15

Complaints filed by females continued to register a higher settlement rate than those filed by males in practically all grounds. In 1985/86 these rates were 70 per cent for females and 56 per cent for males, compared with 80 and 65 per cent in 1984/85.

TABLE 16 - (Employment) Complaints Closed by Disposition, Stage of Employment and Ground, 1985/86

Ground:	RACE/COLOUR														
Type of Disposition:	Black	East Indian	Asian	Native Indian	White	RACE - TOTAL	ETHNIC ORIGIN	CREED	SEX	AGE	HANDICAP	OTHERS *	TOTAL	PERCENTAGE	PERCENTAGE
RECRUITMENT AND HIRING															
Settled	15	1	1	2	2	21	3	3	34	25	30	13	**129**	68	
Dismissed	4	8	-	-	-	12	2	2	4	4	8	-	**32**	17	
Withdrawn	3	-	1	-	-	4	-	1	6	3	12	4	**30**	15	
Sub-Total	**22**	**9**	**2**	**2**	**2**	**37**	**5**	**6**	**44**	**32**	**50**	**17**	**191**	100	24
Percentage	-	-	-	-	-	21	18	26	27	32	19	42			
TERMINATION															
Settled	28	8	7	1	1	45	4	7	48	24	128	10	**266**	60	
Dismissed	16	8	1	2	-	27	12	3	8	19	21	2	**92**	21	
Withdrawn	12	1	3	2	-	18	1	1	20	13	29	1	**83**	19	
Sub-Total	**56**	**17**	**11**	**5**	**1**	**90**	**17**	**11**	**76**	**56**	**178**	**13**	**441**	100	56
Percentage	-	-	-	-	-	51	61	48	46	55	69	33			
DURING EMPLOYMENT															
Settled	19	8	-	1	1	29	3	3	37	6	17	7	**102**	64	
Dismissed	8	-	1	-	-	9	1	3	3	3	4	-	**23**	14	
Withdrawn	8	2	-	1	-	11	2	-	5	4	9	3	**34**	22	
Sub-Total	**35**	**10**	**1**	**2**	**1**	**49**	**6**	**6**	**45**	**13**	**30**	**10**	**159**	-	20
Percentage	-	-	-	-	-	28	21	26	27	13	12	25	**100**		
Total	**113**	**36**	**14**	**9**	**4**	**176**	**28**	**23**	**165**	**101**	**258**	**40**	**791**	**	100
Percentage	-	-	-	-	-	100	100	100	100	100	100	100			

* Marital status; family status; record of offences.

** The difference between the totals on this table and on table 15 represents the complaints of sexual harassment which are not included here.

TABLE 16 (Employment) Complaints Closed by Disposition, Stage of Employment and Ground, 1984/85

This table analyses employment cases filed under Section 4 of the Code by the stage at which discrimination was alleged to have occurred, correlating the disposition of the case with the stage of employment, by ground.

In 1985/86 there were 791 employment cases closed, the majority of which (441 or 56%) involved dismissal or constructive dismissal of employees. One hundred and ninety-one, or 24 per cent of the cases, involved recruitment and hiring, and 159 or 20 per cent involved practices relating to promotions, training and terms and conditions of employment. This ranking of stages applied to practically all grounds.

Cases dealing with recruitment and hiring registered the highest level of settlement, at 68 per cent, followed by cases dealing with problems during employment, at 64 per cent, and by cases dealing with termination, at 60 per cent.

TABLE 17 – (Employment) Complaints Closed by Type of Work and Ground, 1985/86

Type of Work: / Ground:	Race/Colour	Ethnic Origin	Creed	Sex	Sexual Harassment	Age	Handicap	Others *	TOTAL	Percentage
Professional/ Managerial/Technical (Lawyer, Technician, Manager, Teacher, Inspector, Nurse, etc.)	42	3	6	23	8	22	38	4	**144**	16
Sales (Sales Representative, Buyer, Sales Clerk, etc.)	19	2	3	30	20	17	21	3	**115**	13
Clerical Typist, Filing/Accounting Clerk, Receptionist, Key Puncher, etc.)	23	1	–	34	32	21	38	14	**163**	18
Crafts and Foremen/Women (Plumber, Baker, Hairdresser, Lead Hand, Mechanic, etc.)	18	1	4	4	1	11	14	3	**56**	6
Operatives Punch Press/Lathe/Machine/Crane Operator Welder, etc.)	24	7	1	9	6	5	31	1	**85**	10
Services (Waiter/ress, Domestic, Security Guard, Building Superintendent, etc.)	22	6	4	37	27	12	45	7	**160**	18
Labour/General (Driver, Shipper, Cleaner, Assembly Line Worker, Factory Hand, Labourer, etc.)	28	8	5	29	10	13	71	8	**172**	19
Total	**176**	**28**	**23**	**165**	**104**	**101**	**258**	**40**	**895**	**100**

* Marital status, family status, and record of offences

TABLE 18 - Cases Closed by Respondent's Type of Industry and Ground, 1985/86

Type of Industry: / Ground:	Race/Colour					RACE/COLOUR - TOTAL	ETHNIC ORIGIN	CREED	SEX	SEXUAL HARASSMENT	AGE	HANDICAP	OTHER *	TOTALS	Percentages
	Black	East Indian	Asian	Native Indian	White										
Natural Resources	1	-	-	3	1	5	-	1	1	2	-	8	-	17	2
Manufacturing															
Metals/Parts/Machinery	12	3	1	-	1	17	2	-	4	2	7	30	3	65	
Food/Tabacco	6	-	-	-	-	6	3	1	67	3	4	4	2	30	
Wood/Furniture/Paper	2	-	-	1	-	3	1	1	4	1	1	16	-	27	
Automotive/Aircraft	5	1	-	-	-	6	6	3	7	4	3	8	2	39	
Electrical	9	3	1	1	-	14	1	-	2	3	2	8	3	33	
Other	9	6	2	1	-	18	1	3	17	5	7	27	8	86	
Sub-total	43	13	4	3	1	64	14	8	41	18	24	93	18	280	25
Construction	4	-	-	-	-	4	-	-	1	3	4	3	-	15	1
Transportation/Communications/Utilities	3	4	-	3	-	10	2	2	5	3	3	19	6	50	4
Trade and Retail	17	3	2	2	-	24	5	5	36	25	18	31	11	155	14
Finance, Insurance, Real Estate	21	5	2	4	-	32	4	4	17	7	18	22	42	146	13
Community/Business/Personal Services															
Schools/Colleges/Univer.	9	2	2	1	-	14	1	3	1	2	13	9	-	43	
Hospitals/Physicians	7	1	1	-	-	10	1	2	10	3	6	22	6	60	
Employment Agencies	1	-	1	1	-	3	1	-	2	1	-	1	-	8	
Hotels/Restaurants	6	2	1	1	-	10	3	-	21	18	8	25	8	93	
Building Services	10	-	-	-	-	10	2	2	7	5	3	12	2	43	
Other	14	6	2	-	4	26	4	7	19	16	7	21	5	105	
Sub-total	47	11	7	3	5	73	12	14	60	45	37	90	21	352	31
Public Administration	8	8	2	1	-	19	5	1	29	1	14	36	9	114	10
Total	144	44	17	19	7	231	42	35	190	104	118	302	107	1129	100

* Marital Status/Family Status/Record of Offences/Reprisal/Breach of Settlement/No Grounds (S.33)

TABLE 17 - (Employment) Complaints Closed by Type of Work and Ground, 1985/86

"Type of Work" denotes the occupational cagetories of complainants. Complainants in the labour/general category registered the highest number of complaints, followed by those in the services and clerical categories. Complainants in the crafts and foreman/woman category registered the lowest number, followed by those in the operatives category.

TABLE 18 - Cases Closed by Respondent's Type of Industry and Ground, 1985/86

In 1985/86, the Community, Business and Personal Services industries experienced the largest percentage of complaints, at 31 per cent of the total cases closed, followed by the Manufacturing industries at 25 per cent, Trade and Retail industries at 14 per cent and Finance, Insurance and Real Estate at 13 per cent. These trends are similar to those observed in 1984/85, when the corresponding percentages were 36, 24, 11 and 17 per cent.

The trend of higher frequency of complaints in the services sector also apply when correlating the grounds of complaints to the type of industry where the complaints occurred. This is so for all grounds except for handicap where the bulk of complaints is evenly divided between the manufacturing and services industries. This trend reflects a change from 1984/85 when all grounds, including handicap, had higher frequencies of complaints in the manufacturing than in the service industries.

With respect to each single type of industry, the largest number of complaints occurred in Hotel/Restaurants, with 93 complaints or eight per cent of the overall total. The second largest number occurred in the industries of manufacturing metal parts with 65 cases (6%), and the third largest in hospitals/physicians, with 60 cases (5%).

TABLE 19 - Boards of Inquiry Appointed and Completed, 1985/86 (1984/85)

	1985/86		1984/85	
Boards Appointed	24	(32) *	41	(56) *
Boards Completed:	15	(22)	17	(20)
Pre-hearing Settlements	6	(8)	7	(20)
Decisions for Complainant	5	(5)	6	(7)
Decisions for Respondent	4	(9)	4	(4)
Board Decisions Under Appeal	9	(10)	7	(10)

* Number of complainants involved

TABLE 19

Appointment of 24 Boards of Inquiry was requested by the Commission in 1985/86, a decrease of 41 per cent over 1984/85.

It should be noted that the 24 appointments comprise a total of 32 separate complaints. This occurs by virtue of section 31(3) of the Code which enables the Commission to combine complaints that "bring into question a practice of infringement engaged in by the same person" or that "have questions of law or fact in common".

Fifteen boards were completed, six of them having been settled by the parties before or during the hearing. Of the nine hearings that came to a conclusion there were six findings of discrimination with awards in favour of the complainants and five findings of no-discrimination.

TABLE 20 - Inquiries, Voluntary Compliance And Public Education, 1985/86 (1984/85)

Compliance Division	1985/86	1984/85
Inquiries	47,049	51,779
Referrals	13,343	14,345
Informal Resolutions	86	134
Application Form Reviews	550	741
Advertising Reviews	187	275
Exemptions	90	89
Public Education Activities	403	618
Publications Distributed	349,500	368,435

TABLE 20

A comparison of these activities over the two-year period indicates decreases in nearly all areas. This is because of a sustained emphasis on the resolution of formal complaints during 1985/86 and to the large case load carried throughout the year.

TABLE 21 - Closed Race Relations Cases, Consultations and Public Education Activities by Sector, 1985/86 (1984/85)

Sector:	1985/86 Cases: Community Relations Mediations	1985/86 Cases: Community Relations Projects	1985/86 Cases: Public Education Projects	1985/86: Consultations	1985/86: Public Education Activities	1984/85 Cases: Community Relations Mediations	1984/85 Cases: Community Relations Projects	1984/85 Cases: Public Education Projects	1984/85: Consultations	1984/85: Public Education Activities
Neighbourhood Relations	21	4	0	30	15	41	1	0	18	3
Public Services/Facilities	24	0	0	19	8	17	0	1	15	4
Criminal Justice System	11	12	1	37	10	28	3	3	40	8
Educational Institutions	9	26	2	163	159	17	8	9	124	86
The Workplace	13	13	1	61	21	3	8	2	44	18
Unions	0	0	0	20	5	0	2	0	6	0
Media	6	11	0	50	77	14	0	0	15	59
Health/Social Services	1	4	0	38	28	1	2	0	16	4
Community Organizations	24	21	1	360	233	16	12	5	398	203
Religious Institutions	0	2	0	10	3	4	0	0	7	0
Government	21	41	1	130	45	5	9	0	76	28
Community at Large	0	2	0	15	25	2	6	1	42	35
Total	130	136	6 *	933	629	148	51	21	801	448

* As of June 1985 Public Education Projects were incorporated into Community Relations Projects.

TABLE 21 - Closed Race Relations Cases, Consultations and Public Education Activities by Sector, 1985/86 (1984/85)

Definition of Activities

Mediations:

Mediation between parties in conflict in order to diffuse situations of racial and ethnic tension at the community and institutional levels.

Projects:

Development or implementation of specific programs or policies designed to improve race relations at the community or institutional level.

Consultations:

Provision of information and advice on race relations issues to individuals and organizations as requested.

Public Education Activities:

Organization or participation in activities designed to heighten public awareness of race related issues and/or the role and mandate of the Race Relations Division and the Ontario Human Rights Commission.

Public Education Projects:

Design and delivery of race relations training programs to community organizations or institutions in order to heighten awareness of various race related issues.

Comments

There were 933 consultations in 1985/86, an increase of 17 per cent over the total 801 in 1984/85. This resulted from greater emphasis being placed on consulting with institutions and community organizations in order to promote wider community involvement in the area of race relations.

Public education activities in 1985/86 totalled 629, an increase of 40 per cent over the 448 registered in 1984/85. This reflects the growing need to enhance public awareness of race relations issues and of the role and mandate of the Race Relations Division and the Ontario Human Rights Commission.

There were 130 community mediations in 1985/86 representing a decrease of 12 per cent against the 148 registered in 1984/85; and 136 community relations projects, representing an increase of 167 per cent over the 51 registered in 1984/85. This shift reflects both the community demands for these projects as well as the Division's more proactive strategy.

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